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William PALEY'S

LAW AND PRACTICE

OF

# SUMMARY CONVICTIONS

BY

JUSTICES OF THE PEACE:

INCLUDING

Proceedings preliminary and subsequent to Convictions,

ALSO,

THE RESPONSIBILITY AND INDEMNITY OF CONVICTING  
MAGISTRATES AND THEIR OFFICERS.

WITH

PRACTICAL FORMS AND PRECEDENTS OF CONVICTIONS.

*The Fifth Edition.*

BY H. T. J. MACNAMARA, ESQ.,

OF LINCOLN'S INN, BARRISTER AT LAW,

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TO  
THE RIGHT HONOURABLE  
SIR WILLIAM ERLE,  
*Lord Chief Justice of Her Majesty's Court of Common Pleas,*

THIS WORK  
IS  
(WITH HIS PERMISSION)

INSCRIBED

BY

THE EDITOR.





# PREFACE

TO

THE FIFTH EDITION.

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IN THE present edition the Statutes and decisions bearing upon the subject of this work have been brought down to the month of October, 1865. A new chapter has also been added upon the statute 20 & 21 Vict. c. 43, enabling justices to state a case for the opinion of a superior Court (*a*); several matters of interest are discussed which were not treated of on former occasions, *e.g.*, the distinctions between judicial and ministerial acts (*b*), and between directory and imperative provisions in Acts of Parliament (*c*). The question how far the return to a writ of *habeas corpus* or *certiorari* may be controverted is considered much more fully than in previous editions (*d*), while the section relating to the defence which may be offered to an informa-

(*a*) Pages 442—448.

(*b*) Page 20, n. (*k*).

(*c*) Page 35, n. (*h*).

(*d*) Pages 394—401, 430—434.

tion (*e*), and the chapter on actions against justices (*f*), have been re-written.

The Law Journal when cited is intended to be the New Series, unless the contrary is expressed.

The Editor desires to acknowledge valuable assistance which has been rendered to him by his friend Mr. Gilmore Evans, of the Oxford Circuit.

(*e*) Pages 136—153.

(*f*) Pages 450—464.

H. T. J. M.

*Temple, January, 1866.*

EXTRACT  
FROM THE  
P R E F A C E  
TO  
THE FOURTH EDITION.

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THE last Edition of this Work was published in 1838, and it has therefore been necessary for the present Editor to incorporate with it the Decisions and Statutes of eighteen years, including two of the important Acts of Parliament known as Sir John Jervis's Acts (11 & 12 Vict. cc. 43 and 44). In performing this task, it has been his aim to preserve, as far as was possible, the clear and scientific arrangement adopted by the Author, together with his well-considered and lucidly-expressed comments upon this branch of jurisprudence.

The Editor has, however, been compelled to make considerable alterations in that portion of the Work which treated of the Informations, Summons and Evidence as part of the Conviction, on the face of which they formerly appeared, and to assign to them

that which is now their proper position—namely, as preliminaries to, but not as constituent parts of, the conviction.

The Forms in the Appendix have been adapted to the provisions of the statute 11 & 12 Vict. c. 43, many new precedents have been added, and the statute 18 & 19 Vict. c. 126, giving justices a summary jurisdiction over the offence of larceny in certain cases, will be found, with Forms and Notes, in the Appendix.

H. T. J. M.

*Temple, April, 1856.*

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## ADDENDA ET CORRIGENDA.

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- Page 45, line 12—"Justices are no longer disqualified from hearing charges  
" of unlawful fishing by reason of their being mem-  
" bers of an association for preservation of the fish.  
" 28 & 29 Vict. c. 121, s. 61. See p. 603, n. (b)."
- 46, n. (u), *add*—"p. 68, n. (u)."
- 97, n. (o), *add*—"R. v. Shaw, 34 L. J., M. C. 169."
- 187, n. (i), *add*—reference to 11 & 12 Vict. c. 43, s. 4.
- 316, line 21, *add*—reference to the Small Penalties Act, 28 & 29  
Vict. c. 127. See p. 543.
- 492, n. (d), *for* "c. 49," *read* "c. 48."
- 639, n. (b), *to* "*Wheeler v. Gray*," *add*—"4 C. B., N. S. 584; 6 *id.* 606,  
" and *Williams v. Golding*, Mich. Term., C. P. 1865."
- 707, last line, *for* "488" *read* "489."
- 736, "Merger," *for* "55" *read* "67."
- 737, "Modern Reports," *for* "212 n. (n)" *read* "254, n. (r)."
- 740, "Paper Books," *for* "455" *read* "445."

THE  
Law and Practice  
OF  
SUMMARY CONVICTIONS.

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INTRODUCTION.

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AN inquiry into the antiquity of that summary method of conviction, which forms the subject of the following Treatise, or into the causes which occasioned its substitution for that mode of popular trial, which distinguishes our jurisprudence, is rather prompted by curiosity, than by any relation to the law upon the present subject as it now subsists: since that is founded entirely upon the positive authority of acts of parliament, from which source alone the whole system derives its being. A few cursory remarks, however, upon the date and origin of a judicature, so remarkably contrasted with the spirit of our primitive institutions, may not, it is hoped, be altogether unacceptable or misplaced.

The office of a justice of peace has been so much enlarged by the duties annexed to it, in the execution of penal statutes, that there remains scarcely a resemblance between the present office and that of the ancient conservators of the peace, out of which it has been gradually formed. The first great alteration, that deserves to be remarked, is the manner of appointment. Till the commencement of the reign of Edward 3, those officers, like the sheriffs down to the preceding reign, and like the

## INTRODUCTION.

coroners to this day, were chosen by the freeholders at large; agreeably to that principle of popular election in the choice of magistrates, which pervaded the Anglo-Saxon institutions, and seems from the earliest times to have characterized the policy of all those northern nations from which they emanated (*a*). The act of 1 Edw. 3, at the same time that it removed the choice from the people, by ordaining that thenceforth in every county certain persons should be *assigned*, *i. e.* by commission, to keep the peace, insured also a more regular appointment of officers for that purpose throughout the kingdom. The persons so assigned under the authority of that law acquired, about thirty-five years afterwards, the legal title of justices of the peace; by which appellation they were first styled in a statute of the thirty-sixth year of Edw. 3 (*b*).

Their power and duty, however, at first, was simply that of guarding and taking security for the preservation of the peace; nor was it till a considerable time had elapsed from their first appointment by Edward 3, that they were invested with any judicial authority in relation to other statutory offences,—nor until a much later period still, that a discretionary power of conviction was vested in individual justices, without the intervention of a jury or any popular form of trial.

For some time following the first of these periods, when any new statute was passed for the regulation of trade or police, which required particular provisions to be made for its administration, the method was, by the statute itself, either to assign the execution of it to the sheriffs of counties, and mayors or other head-officers in boroughs, which was most usual in matters merely affecting the police,—or in other cases to declare, that commissioners, sometimes also styled justices, should be appointed for carrying the act into execution; this was more frequently

(*a*) *Eliguntur in conciliis et principes qui jura per pagos vicosque reddunt.* Tacit. de Mor. Ger.

(*b*) See the observations of the court upon this subject in *R. v. Dunn*, 12 A. & E. 617.

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the case in those penal statutes which affected peculiar trades, fisheries, and the like; and such commissioners were either nominated by the act itself, or appointed by commission from the crown, under the authority of the act. By degrees, however, the execution of such penal laws was, by their respective provisions, more frequently vested in the justices of peace, by that denomination; who, being in general the persons best qualified by discretion and knowledge in each district, might, without the trouble of a fresh selection, be most eligibly fixed upon for the performance of that duty; and the former method, at the same time, was gradually disused; so that, towards the middle of the reign of Henry 4, the practice of appointing commissioners for particular acts had almost entirely given way to that of charging the justices of peace with the execution of them (c).

Still, however, their power, in regard to the manner of executing that duty, was restrained to the only mode of judicial inquiry known to the common law, and to which alone a general authority to *hear and determine* offences could refer. Neither the acts above alluded to, which were to be executed by special justices, nor, at first, those which were referred to the justices of peace by their name of office, contained any other direction as to the manner of their proceeding, than what was conveyed by the expressions authorizing them to *hear and determine*, or to *examine and punish* offences against the respective acts; which, according to the general principles of law, implies only a power to proceed by the common law method of inquisition and verdict (d).

The justices, therefore, were under the necessity of holding sessions and assembling jurors for the trial of

(c) Some instances, however, of what had formerly been general exist in later times; such, for example, is the statute 1 Will. & M. c. 32, relating to the export of wool, which specifies the commissioners for carrying it into execution. And

the Statute of Sewers, 23 Hen. 8, c. 5, is administered by special commissioners, appointed according to the provisions of that and subsequent acts.

(d) See 4 Co. 74, b, and the authorities there referred to.

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these smaller offences. The trouble and expense of these meetings to the justices themselves, when there were but few in each county—as, in the thirty-fourth year of Edward 3, not more than eight in the county of Kent (*d*),—was the occasion that they were not called sufficiently often for the number of offences which required to be disposed of; and therefore it was, that the statute of 36 Edw. 3, st. 1, c. 12, commanded that they should be held at least four times in the year: for it is observable that neither this, nor the subsequent statutes, by which it is enforced, 12 Ric. 2, c. 10, and 2 Hen. 5, c. 4, restrain the times of holding the sessions to that number; and the latter expressly adds, “and oftener if need be.” However, as the justices were not enjoined absolutely to hold them, except at those times, and as the act 12 Ric. 2, c. 10, which assigned them wages for defraying their expenses at the sessions, only made provision for the four principal or quarter sessions, the effect was to limit the actual times of holding the sessions to those periods. As the offences subjected by various statutes to the cognizance of justices became more numerous, and particularly during the reign of Henry 7, when their number was vastly increased, their assembling once in each quarter of a year was found insufficient to afford the despatch, which the nature of those offences required; to provide a remedy for which, without introducing any new and extraordinary jurisdiction, or departing from the ancient mode of conviction by verdict, the statute 33 Hen. 8, c. 10 enacted, that at the Easter sessions, in every year, the justices should diligently peruse and study the statutes therein enumerated (comprehending, in fact, all those in the execution of which they had authority), and should then divide themselves according to hundreds, wapentakes, &c., assigning at least two to each division, who in their respective divisions should (six weeks before each of the general quarter sessions) hold a special sessions ex-



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pressly for executing those statutes, at which they should inquire of the offences specified, either upon presentment, *i. e.* by indictment, previously found by the grand jury, or upon information by a private person ; but, whether upon indictment or information, as the statute expressly takes notice, the party, previous to any punishment, was always supposed to be convicted by confession or verdict of twelve men ; and the same statute contains regulations for impanneling the jury upon those occasions (*e*). The opposite inconvenience, however, resulting from this act, of calling the country together every six weeks for the special and general sessions, was very soon felt to be greater than the advantage proposed from it in the disposal of offences ; and therefore, four years afterwards, it was repealed by another act, 37 Hen. 8, c. 7, for the reason expressly assigned, *viz.*, “ that the king’s most loving subjects are much travailed, and otherwise encumbered, in coming and keeping of the said six-weeks’ sessions, to their costs, charges, and unquietness ;” and, by this latter act, the articles enumerated in the former are referred to the general quarter sessions, as before.

In order, therefore, to avoid the inconvenience of postponing the trial of small offences to the quarter sessions, and in very many cases of committing the party for the intermediate time,—or, on the other hand, of making too frequent calls upon the country, in assembling a jury at shorter intervals,—there seems to have been no alternative, as those offences became more and more numerous, than that of entrusting to the justices, out of sessions, a power to hear and determine the matters themselves.

*When* this expedient was, for the first time, adopted by the legislature, it is not easy, on account of the ambiguous wording of some of the older statutes, to determine with precision. In very early times such a power had been conferred upon them in two cases, which seemed in their

(*e*) See the preamble to 37 Hen. 8, c. 7, in which the above-mentioned statute is fully recited.

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nature to require a speedy interference ; but, even in these, it was confined to their own view : these are the cases of forcible entries, 12 Ric. 2, c. 2, and of riots, 13 Hen. 4, c. 7 ; in the latter of which, it may be remarked, this extraordinary jurisdiction is carefully limited by the urgency of the occasion, by which alone, therefore, it was probably thought to be justified ; for it is there directed, that if the rioters had departed before the arrival of the justices, so that the view could not be had, they are then to inquire of the matter, not by themselves, but by means of a jury, which they are specially directed in that case to summon. One other instance also occurs of a power to convict without jury, but that was on *confession* of the party : viz., by the act of 2 Hen. 5, st. 1, c. 4, relating to labourers, which authorized them to examine labourers, &c. on their oath, and on *their confession* to punish them *as if they were convicted by inquest*.

These two cases of *view* and *confession* seem to be the only clear instances in which justices of peace were empowered, in those early times, to inflict punishment upon their own inquiry and judgment. There are, indeed, two other statutes, in which such an authority may perhaps be doubtfully inferred. The first is that of 17 Edw. 4, c. 4, against fraud in the making of tiles ; which empowers the justices of peace, “and every of them, *by their discretion*, as well by examination as otherwise, to inquire, hear, and determine the offences against that act ;” from which large words Mr. Lambard classes this as one of the matters of which a single justice might take cognizance out of sessions, though not without stating a doubt whether the act would bear that construction. The other is the statute 11 Hen. 7, c. 15, against fraud by sheriffs, under-sheriffs, &c. in entering complaints in the county courts ; which empowers any justice of the peace, on complaint of the party grieved, to examine the person complained of, “and if on such examination he shall be found in default, he shall be convicted and attain of the offence, without further examination

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or inquiry," and forfeit 40s., which the justice is directed to certify, together with the examinations, into the Exchequer. This also is enumerated by Lambard, amongst the things that justices may execute summarily out of sessions. But what was the mode of proceeding contemplated in framing these acts, or whether these words are sufficient to convey an authority then perfectly novel, and which we might therefore expect to find explicitly described, must remain a matter of doubt. The author already referred to seems to have been at a loss to define the method of proceeding intended by the expressions in those acts, and to have hesitated in pronouncing that a sole power of determining was vested in justices, without a jury; "for," he observes, "how far this discretion and the word *otherwise*, may be extended, in this and such like cases, cannot be foretold, for it is referred to the justices, and they must take counsel *ex re* and *ex tempore* for it" (f).

This leads to another observation necessary to be kept in mind, in order to guard against a misconstruction of some of the older statutes, particularly those in the reign of Hen. 7, which are worded in a manner that may at first sight appear to imply a power of summary conviction, in contradistinction to the trial by the country, but which have, in reality, a totally different view. The statutes alluded to are those which make use of expressions of the following import; viz. that the justices of the peace may hear and determine the offences specified, "as well by inquisition as by information and proofs," (as in the Game Act, 11 Hen. 7, c. 17); or, "that the justices, upon examination of two lawful witnesses, may award process in the same manner as upon presentment or inquisition of twelve men," (as in the statutes 5 Eliz. c. 12, 4 & 5 Phil. & Mary, c. 2, 5 Edw. 6, c. 14). But it is to be observed, that when a power was given to justices of peace to *hear and determine*, &c., this conferred an authority only to proceed in the common law way, by indictment

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found by the grand jury,—or, as the statutes express it, upon inquisition and presentment of twelve men. Upon this proceeding, the justices had authority of course to award process, but they had no power to do so, or to inquire upon the presentment or information of a private relator (*g*); and therefore the informer had no means of recovering at the sessions a share of the penalty, unless such a mode of recovery was expressly authorized by statute; which, according to Mr. Lambard, was the sole object of the provisions above alluded to. This purpose, though sometimes expressed with a conciseness that may give rise to some ambiguity, is in certain acts explained in a manner that serves to illustrate the meaning of those which are less explicit: of such it is sufficient to refer to those of 25 Hen. 8, c. 13, s. 5, and 3 Jac. 1, c. 13.

The forfeitures imposed by penal statutes, if not otherwise specially disposed of, belonged to the crown; but experience proved, that the admission of the informer to a share was equally necessary to the purposes of police and revenue. All the acts, however, prior to the reign of Henry 7, which entitle the informer to a moiety of the penalty, direct the mode of recovery to be by action of debt, bill, or plaint; nor, before that time, does there appear to be any instance of a power to proceed by information at the sessions for penalties. In that reign it was, that it became usual to insert, in penal statutes, the provisions authorizing the recovery of the penalties before the justices in sessions by information, and empowering them to award process upon the information of any person, as they might upon indictment or presentment by the inquest. The policy of affording this encouragement to prosecutions, which brought a share of the penalties to the crown, is characteristic of the ruling disposition of the sovereign; and, in that light, it may be worth remarking, that the last session of his reign affords a striking proof of the influence of that spirit upon the character of the laws, by the iniquitous principles of making

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the justices sharers in the penalties of their own inflicting. The statute 19 Hen. 7, which imposed most unusually heavy penalties upon the use of various modes of taking deer, authorized two justices in sessions arbitrarily to examine and commit persons whom they judged guilty, until payment of the fines to the king ; and declared them entitled to one-tenth of all such fines, "for their labour in that behalf." This disgraceful pattern, as it had no precedent, has happily had no copy, in our law. The power, however, of inquiry on information by justices in sessions, which took its rise about the period we are speaking of, continued to prevail, in penal statutes of the succeeding reigns, till the mode of recovery, by summary examination before a single justice or justices out of sessions, was more commonly substituted in its stead.

To return to our first inquiry, concerning the period when that method came into use, it has been already remarked, as a settled maxim, that a naked authority to *hear and determine* implied a proceeding conformable to the common law mode of determination only, *i. e.* by a jury ; and one instance only, that of 17 Edw. 4, c. 4, is noticed earlier than the reign of Henry 7, which carries the appearance of a more arbitrary and discretionary jurisdiction. But, in the eleventh year of that king's reign, the legislature was induced to break down all respect for the ancient common law mode of trial, by an act that, in spite of the fair preamble, betrays its true source in the rapacious policy of the monarch, viz. 11 Hen. 7, c. 3 ; which, pretending that many wholesome statutes were not executed, by reason of the embracery and corruption of the inquests, ordained, that it should be lawful for the justices of assize, and the justices of peace, in every county, upon information (for the king), *at their discretion*, to hear and determine all offences short of felony against any statute then in being (*h*). This discretionary authority, fettered by no

(*h*) 11 Hen. 7, c. 3. See the statutes printed by Powell, 1551, vol. i. ; and 4 Inst. 40, 41.

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rules, and intentionally absolved from the observance of law and usage, enabled the justices to execute all penal statutes without any presentment or trial by jury. The real intention of the statute, which was that of replenishing the exchequer by the terror of arbitrary and vexatious prosecutions, under colour of penalties, upon all the most obsolete penal statutes, however obscure or inconsistent with the times, was rigorously seconded by Empson and Dudley, whose activity was stimulated by a grant of the extraordinary office of Clerks of the Forfeitures. By their means the mischiefs of a power, so liable in any hands to abuse, became an instrument of intolerable oppression, the more galling from its pretensions to legal authority. Among the first acts, therefore, of the parliament which commenced with the succeeding reign, was the abolition of that dangerous power, by the repeal (*i*) of the statute, and the attainder of the two obnoxious instruments of its abuse; whose atonement, according to the maxims of popular justice, was measured by the iniquity, rather than the illegality, of their acts.

After this short and unfavourable experiment, which Sir E. Coke adduces as an example of the danger of altering the common law, and which has never been imitated by a like *general* law of the same nature, the legislature, for some time, seems to have been, not without reason, sparing in the sanction of a summary jurisdiction, even in particular offences. And we have already (*k*) had occasion to remark the means unsuccessfully tried in the thirty-third year of Hen. 8, to provide for the accumulated execution of the penal statutes, without deviating from the common law rules of judicature.

The earliest statute, upon which a summary conviction by a justice is on record, or of which a precedent is found in the books, is that of 33 Hen. 8, c. 6, against the practice of carrying daggs, or short-guns. Mr. Lambard has given

(*i*) 1 Hen. 8, c. 6.

(*k*) *Ante*, p. 4.

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a precedent of a conviction upon this statute (*l*); and there appears to have been one removed into the Court of Queen's Bench by *certiorari*, as early as the forty-third year of Elizabeth, 1600: and this very case affords a proof of the objection, which, in the state of manners at that day, might well exist against relaxing the jealousy of the common law, by entrusting any thing like arbitrary authority in private hands. It appears that a sheriff's officer, going to execute a writ against a justice of peace for a debt, and taking with him a hand-gun, from the apprehension of a rescue, the justice, instead of obeying the writ, apprehended, convicted, and imprisoned the officer, till he paid a fine of 10*l.*, under colour of the act of parliament.

Dr. Burn, indeed, assuming the statute 43 Eliz. c. 7, (against hedge-breaking, and some other petty misdemeanors) to be the first statute which, in authorizing the special jurisdiction of a single justice, requires the examination to be on *oath*, conjectures, from that circumstance, that in all former acts the justices of peace, upon whom an authority was conferred to inquire into and punish offences against those acts, were considered as acting in their sessions by a jury, in like manner and form of proceeding as in other of the queen's courts (*m*).

The peculiar manner, indeed, in which the statute is worded, in regard to the administration of the oath by a single justice, distinguishes it from any former one, and proves that an unusual authority, at least, was in the contemplation of the framers of it. But that this authority was altogether novel, is contradicted both by the instance above remarked in 33 Hen. 8, c. 3, and by a former statute at the commencement of the same reign, viz. 5 Eliz. c. 4, for regulating the conduct of servants, which confers a large portion of discretionary authority upon justices of the peace, and such as can scarcely be explained otherwise than as an authority to convict, upon their own judgment,

(*l*) Chap. VI., p. 867.

(*m*) 5 Chitty's Burn's Justice, tit. *Oaths*, p. 247, note (*a*), 29th edition.

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out of sessions, and without the verdict of a jury,—particularly the twenty-first section, which declares, that any offender, of the description there mentioned, being convicted before any two justices by confession, or by the testimony, witness and *oath* of two honest men, shall suffer imprisonment for one year ; and what proves the proceeding intended to be of a summary kind, and out of sessions, is what follows, viz., that, if the offence requires further punishment, the offender shall receive such as the justices in their open sessions shall think fit.

The few instances, however, in which a summary power of fine or imprisonment was committed to individual justices, amounting, up to the end of the reign of Elizabeth, to no more than four or five, attest the unwillingness of the legislature to quit the safe and approved forms of criminal judicature. In the following reign the multiplied statutes against a variety of petty disorders, such as those relating to alehouses, profane swearing, drunkenness, game, wagers, embezzlements, and such like, occasioned a more frequent recourse to the summary interference of justices of peace, which was gradually extended to matters of greater importance, as the nation became more familiarised to its use ; and, after the Restoration, by the first excise acts, and by several statutes affecting the regulations of trade, and, lastly, by the Game Act, 22 & 23 Car. 2, the practice was insensibly moulded into the jurisprudence of the country ; of which it still continues to form an important branch.

We shall conclude these remarks with briefly noticing the changes which have been made in the system since its institution ; the most material of which is the right of *appeal*.

By the first statutes, which gave a power to justices of the peace out of sessions to hear and determine the respective offences thereby created, that determination was final as to the facts ; for a liberty of appeal, unless ex-



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pressly annexed to the authority, was not, like that of suing out a *certiorari*, implied as a common law right.

The privilege of appealing to the sessions against the *conviction* of single justices, by which that authority is now so generally and properly qualified, was not known till the reign of Charles 2; though the model of an appeal in other matters might be found in the acts relating to the poor, as far back as that of Elizabeth. The earliest instance of an appeal to the sessions, against a penal conviction, is found in the Hereditary Excise Act, as it is called, 12 Car. 2, c. 23; which authorizes an appeal, not indeed against the decision of justices of peace, if they choose to act, but against that of certain sub-commissioners, on whom, in case of the neglect or refusal of the justices, the power of inflicting the penalties of the statute is devolved, but subject to the review and final determination of the justices in sessions. The first instance of an appeal from the sentence of justices of peace, is in the statute 22 Car. 2, c. 1, called the Conventicle Act; and it deserves to be remarked, that the idea of controlling the jurisdiction of individual justices seems originally to have been by allowing an appeal to the verdict of a jury; for that act, after authorizing a summary examination and recovery of penalties before any two justices, gives to the party convicted the privilege of an appeal in writing, to the judgment of the justices of the peace in their next quarter-sessions, upon which "he may plead and make his defence, and have his trial by a jury thereupon"<sup>(n)</sup>. That precedent, however, has not been copied; and the notion of an appeal to a jury seems to have been speedily laid aside; for an act of the following session, the 22 & 23 Car. 2, c. 25, (the Game Act), establishes the mode of an appeal which has since been uniformly adopted, viz. to the justices in sessions, but without the privilege of a trial by jury<sup>(o)</sup>.

(n) Sect. 6

(o) The precedent has been re-

vived by the 9 Geo. 4, c. 61, s. 21, which provides that the licence of a

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The principal alterations introduced by more modern acts of parliament have been, by taking away the writ of *certiorari* in numerous cases, and by the frequent adoption of compendious forms, which greatly abridge the task and care of the magistrate in drawing up the conviction. The entire dispensation from any detail, either of the proceeding before the magistrate, or of the proofs in support of the fact, which these forms allow, is undoubtedly calculated to secure the execution of penal statutes, by rendering it more easy: for the conviction is thereby reduced to a mere memorandum of the judgment: and if this had been the sole purpose for which the record of the magistrate was originally required, no objection could be raised to its being rendered as concise as possible. But that this was considered only as one object of it, and that the design of the conviction was not merely to record the fact of the judgment, but to show that the proceedings required by justice had been regularly observed, and the sentence legally supported by the evidence, is every where evinced by the language and sentiments of the ablest judges, from the time of Lord C. J. Holt; who himself, on all occasions, seems to have regarded the obligation of recording the whole proceedings as a necessary counterpoise against the liability to error or misapplication, to which a private and discretionary tribunal is naturally exposed. Considering, indeed, the severity of many of the penalties subjected to this jurisdiction, without any opportunity of pleading to the conviction,—and that, moreover, if the conviction should be set aside upon appeal, yet, as the law now stands, where the magistrate does not exceed his jurisdiction or act in a matter in which he has no jurisdiction (*p*), nothing short of express

publican shall not be forfeited for misconduct, but by appeal to the quarter sessions and the verdict of a jury; also by the general Highway Act (5 & 6 Will. 4, c. 50, ss. 88, 89), any person aggrieved by a certificate of justices for stopping up, diverting,

&c., a highway may appeal, and a jury at sessions is then to determine whether the new highway is nearer, &c. See *R. v. JJ. of Worcestersh.* 3 El. & Bl. 477.

(*p*) 11 & 12 Vict. c. 44, s. 2.

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malice in the magistrate entitles the party grieved to any redress for the inconvenience he may have been put to,—it may be worthy of deliberation, whether the too prevalent use of these short forms of conviction, particularly in regard to offences of which the evidence may involve some nicety, does not, by withdrawing the principal obligation to a regular, perfect and cautious investigation, leave too little security against the possible effects of haste, mistake, or preconception, which, without the least mixture of bad motives, may produce as much injustice as malice itself.

## PART I.

## MATTERS ANTECEDENT TO CONVICTION.

## CHAPTER I.

## OF THE SUMMARY JURISDICTION OF JUSTICES OF THE PEACE.

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SECT. 1.—*Of the Jurisdiction in general.*

THE examination and punishment of offences in a summary manner by justices of the peace out of their sessions, and without the intervention of a jury or an open trial, are founded entirely upon a special authority conferred and regulated by statute. No new offence is cognizable in that manner, unless expressly made so by act of parliament (a). Nor can any power expressly given to a justice, to do a particular act, be enlarged by inference. Thus, where the 6 Geo. 2, c. 31, gave a single justice power to take the examination of any single woman, in cases of bastardy, if she should *charge* any person with having gotten her with child, it was held, that the statute did not incidentally give the justice power to *compel* the woman to be examined (b). So, although the justices of the peace have jurisdiction given them, by the 6 Geo. 3,

(a) *Agard v. Cavendish*, Saville, 134.

(b) *Ex parte Martin*, 6 B. & C. 80; 9 Dowl. & Ryl. 65. Not even an obvious omission in an act of par-

liament can be supplied, except by the legislature. *Underhill v. Longridge*, 29 L. J., M. C. 65. See also *Re Wainwright*, 1 Phil. 261; 12 L. J., Chan. 426.

c. 25, to determine disputes between masters and servants employed in manufactures or trade, this does not give them jurisdiction to settle disputes between masters and household servants (c). The proceedings, also, under an authority so created must be strictly conformable to the regulations prescribed by the special law in each instance, from which all their force is derived (d).

This is the first requisite, the absence of which can by no means be cured. But, besides this, there are other rules applying generally to the system of summary convictions, which are not less necessary to be attended to in the exercise of this important jurisdiction. These I now propose to consider in the following order:—1st. As they relate to the duty of magistrates in the examination, hearing and judgment of offences in a summary way; 2ndly. To the form of recording the proceedings, or what is usually termed the conviction; 3rdly. The steps subsequent to the judgment, including the various processes of execution, as well as those of appeal; and, lastly, what relates to the protection and indemnity of magistrates, and their subordinate officers, in the exercise of this duty.

The usual mode of proceeding is, by information, summons and judgment; which will be examined separately. But it may be proper, in the first place, to state those rules which concern the jurisdiction of the magistrates.

## SECT. 2.—*Of the Limits of the Jurisdiction within which Justices may act or their Process be available.*

The authority of justices of the peace appointed by commission from the crown is limited to the respective

The residence of the magistrate.

(c) *Kitchen v. Shaw*, 6 A. & E. 729; 1 Nev. & P. 791; and see *R. v. Hulcott*, 6 T. R. 583; *Branwell v. Pennick*, 7 B. & C. 536. Analogous cases decided upon the later statute (4 Geo. 4, c. 34), relating to

Masters and Servants, are *Hardy v. Ryle*, 9 B. & C. 603; *Lancaster v. Greaves*, *Id.* 628; and *Ex parte Johnson*, 7 Dowl. 702.

(d) *Coles' case*, Sir W. Jones, 139, 170; 1 Sh. 14.

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counties therein specified. And that of magistrates in separate jurisdictions is confined to their respective districts: it is in no case attached to the person, so as to be capable of being exerted elsewhere than within those limits. It is laid down by *Dalton* (*e*), that a justice of the peace, for the time that he shall make his abode, or be out of the county where he is in commission, cannot intermeddle to take any recognizance or any examination, or otherwise exercise his authority in any matter that shall happen within the county where he is in commission; neither can he cause one to be brought before him out of the county where he is in commission; “for, being out of the county where he is in commission, he is but as a private man.” A distinction, however, is remarked by Mr. Serjeant *Hawkins* (*f*), between *coercive* or *judicial* and *ministerial* acts; the former of which cannot be performed by magistrates out of their own county, but the latter, it is said, may. And it is affirmed by the same authority, that recognizances and informations voluntarily taken by magistrates out of the county, &c., are good. This opinion is founded on the following case:—The question was as to an oath made by a person robbed, (preparatory to an action against the hundred on the statute of *Hue and Cry*, 13 Edw. 1.) before a justice of the county, as required by 27 Eliz. c. 13. The latter statute directs the oath of the robbery to be made before some justice of the county where the robbery was committed, and inhabiting within the hundred. The oath, in the present case, was made in London, before a magistrate of the county of Berks (where the robbery was), whose usual residence was in the hundred, but who, at the time of receiving the oath, resided in London. The Court of Queen’s Bench, and afterwards all the judges upon conference, held this sufficient (*g*). It was said to

(*e*) Dalt. c. 6, p. 19.

(*f*) 2 Hawk. P. C. 47, 8th edit.  
by Curwood, and see 2 Hale, P. C.  
51; Com. Dig. Justices of Peace

(B.) 1; 4 Bac. Ab. 619, 7th edit. tit.  
Justices of Peace (E.) 5.

(*g*) *Helier v. Benhurst*, Cro. Car.  
211; *Jones*, 239; *R. v. All Saints*,

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be the usual course for justices to take informations against offenders in any place out of the county, to prove offences in the county where they are committed. It must, however, be considered as doubtful, whether a magistrate can, out of the county, properly receive an information upon oath to found a subsequent proceeding before himself of a penal nature; and it is clear, that any coercive or judicial act would be altogether void unless done within the county (*h*).

The distinction above suggested was recognized and acted upon in two recent cases under the stat. 56 Geo. 3, c. 139. By the first section of that act, before any child is bound apprentice by the parish overseers, he is to be taken before two justices of the county, &c., wherein the parish is situate, and they are to inquire into the propriety of binding him apprentice to the person proposed, and if upon examination and inquiry they think it proper that he should be so bound, they are required to make an order declaring that such person is a fit person, and that the overseers are at liberty to bind him accordingly, and, after such order has been made, the justices are to sign their allowance of the indenture of apprenticeship before the same is executed.

An allowance of the indenture under this section by the same justices who had made the order for binding the apprentice was held to be valid, although the place where it was signed did not appear upon the instrument, as it was in discharge of a purely ministerial function and not so much an act of jurisdiction as a voucher of that upon which judgment had been already exercised (*i*).

By the second section of the above statute, where the person to whom the child is bound resides in a different country or jurisdiction of the peace from that whence he is bound, the indenture must be also allowed by the

*Southampton*, 7 B. & C. 785; and see *Bosanquet v. Woodford*, 5 Q. B. 310.

Dalt. c. 25.

(*i*) *R. v. Stainforth*, 11 Q. B. 66; see *Staverton v. Ashburton*, 4 El. & B. 526; 24 L. J., M. C. 53.

(*h*) *Helier v. Benhurst*, *supra*, and

justices of the county into which he is bound, but before such allowance, notice is to be given to the overseers of the parish in which the child is to serve. The allowance under this section by the justices of the county, in which the apprentice was to serve, was held to be a judicial act, as they were invested with a discretionary veto in the matter, and must hear and decide upon such objections to the binding of the apprentice as might be raised by the overseers, to whom notice had been given. In this case, therefore, the rule applied, that justices acting judicially must appear to be acting in their jurisdiction as well as for it (*k*).

(*k*) *R. v. Totness*, 11 Q. B. 80; *R. v. Stockton*, 7 Q. B. 520; *R. v. Newton Ferrers*, 9 *Id.* 32; *R. v. Blathwayt*, 3 D. & L. 542; *R. v. Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49; *R. v. Holborn Union*, 6 E. & B. 715; 25 L. J., M. C. 110. The test of an act being judicial or ministerial is, whether the justices are entitled to withhold their assent, if they think fit, or whether they can be compelled by mandamus or rule to do the act in question. (See per Wightman, J., in *Staverton v. Ashburton*, 4 El. & Bl. 531.) It may be useful to collect here other instances besides those in the text. The following acts are judicial:— Allowance of the indenture of a parish apprentice under 43 Eliz. c. 2, *R. v. Hamstall Ridware*, 3 T. R. 380. Admitting to bail, *Linford v. Fitzroy*, 13 Q. B. 240, 247. Taxation of costs, *R. v. Recorder of Cambridge*, 8 El. & Bl. 637; 27 L. J., M. C. 160. Entering into recognizances for the trial of a controverted election of a member of parliament, under 4 & 5 Vict. c. 58 and 11 & 12 Vict. c. 98, Bar. & Aust. Election Cases, 552; Hansard's Parl. Deb., 3rd series, vol. 59, p. 1130.

In general, the issuing of a warrant of distress or commitment is a judicial act, as the party against whom it is sought should have an opportunity of showing that he has obeyed the order or conviction which

the warrant is intended to enforce; *R. v. Benn*, 6 T. R. 198; *Harper v. Carr*, 7 *Id.* 270; *Painter v. Liverpool Gas Company*, 3 A. & E. 433; *Skingley v. Surridge*, 11 M. & W. 503; *Hammond v. Bendyshe*, 13 Q. B. 869; *Kinning's case*, 10 Q. B. 730, 4 C. B. 507; *Jay v. Halksworth*, 2 Com. L. Rep. 1776. See where the warrant (under special circumstances) was allowed to issue at once, *Re Hammersmith Rent-charge*, 4 Exc. 87, and *Arnold v. Dimsdale*, 2 El. & Bl. 580, 22 L. J., M. C. 161. As a general rule, if the order which the magistrate is asked to enforce is good on its face, he cannot inquire into its validity, and this is so, although the statute does not allow an appeal; *R. v. JJ. Yorksh.* 31 L. J., M. C. 189; *Ex parte May*, *Id.* 161, 2 B. & S. 426; *Ex parte Williams*, 2 El. & Bl. 84, 22 L. J., M. C. 125; *Luton Board of Health v. Davis*, 29 L. J., M. C. 173 & 175, n. He should give the party, against whom the order was made, an opportunity of stating whether it has been obeyed or appealed against, for that is consistent with the order itself; but beyond that, the function of the justice in such cases is merely ministerial. Thus, under The Public Health Act, 1848, the local board is authorized to require persons to remedy defective drains, &c., and such persons on noncompliance are liable to penalties. The power to



## JURISDICTION, LOCAL EXTENT OF.

If a statute refers a matter to "any two justices," they must be justices having jurisdiction according to the rules

determine the nature and extent of the works to be done to the drains is vested in the local board, and their decision cannot be reviewed by the justices; *Hargreaves v. Taylor*, 3 B. & S. 613; 32 L. J., M. C. 111. The duty of a magistrate on such occasions is analogous to that of enforcing poor-rates, which is simply to see that the rate is good on the face of it and unappealed against, that the person rated was in the visible occupation of the property rated within the parish, and that he has not paid the assessment. He cannot go into the question of beneficial occupation, which is matter only for the quarter sessions on appeal. See *Ex parte May*, 2 B. & S. 426, 31 L. J., M. C. 162; *R. v. Kingston-on-Thames*, 1 E. B. & E. 256; 27 L. J., M. C. 199; *R. v. JJ. Warwicksh.*, 29 *Id.* 176. But if an order, sought to be enforced, is bad on its face, the justice may refuse to issue his warrant. Thus an order, under the Metropolitan Building Act, 1855, requiring the owner to take it down and repair it, should show that the owner was summoned to answer the complaint and that the complaint was true; and where these statements are omitted, the justice is entitled to consider the validity of the order; *Labalmondier v. Frost*, Ell. & Ell. 527; 28 L. J., M. C. 155. And a magistrate is not bound by the certificate of the architect of the Metropolitan Board of Works as to "the general line" of buildings under the Metropolitan Management Act, 1862. *Vestry of Hanover-square v. Sparrow*, 33 L. J., M. C. 118.

The granting of the certificate of dismissal of a complaint for an assault under 9 Geo. 4, c. 31, s. 27 (or now under 24 & 25 Vict. c. 100, s. 44) is a ministerial and not a judicial act; the magistrate is therefore bound to grant it on application of the party entitled to it, and this whether the application be made at once or in the absence of the other party. *Hancock v. Somes*, Ell. & Ell.

795; 28 L. J., M. C. 196; *Costar v. Hetherington*, Ell. & Ell. 802; 28 L. J., M. C. 198.

A justice is bound to issue a distress warrant against the guardians of a union, who have been surcharged by the auditor of accounts of a poor-law union and have not appealed against it, on summons and proof of so much as is required by sect. 9 of the 11 & 12 Vict. c. 91. *R. v. Finnis and others*, 28 L. J., M. C. 201; 5 Jur., N. S. 791. Where power is conferred upon justices to issue a distress warrant, "if they shall think fit," they must not refuse to issue it because they think the Act of Parliament does an injustice in giving such power in the particular case. *R. v. Boteler*, 33 L. J., M. C. 101.

If an inquiry into the compensation due to a claimant for land injuriously affected by a railway company takes place before a jury pursuant to the 8 & 9 Vict. c. 18, s. 68, and the costs are settled by one of the Masters of the Queen's Bench, under sect. 52, the decision of the Master as to amount cannot be reviewed by a magistrate, who on application for a distress warrant to levy the costs, under sect. 53, is bound to consider the Master's decision as final; *The Metropolitan Railway Company v. Turnham*, 32 L. J., M. C. 249. Such decision of the Master is, however, subject to review by the court of which he is Master. *Id.*

The backing of a warrant is merely ministerial, *post*, p. 24. So is the allowance of a poor-rate, *R. v. Hamstall Ridware*, *supra*; *R. v. JJ. Dorchester*, 1 Stra. 393, and of a pauper's certificate, *R. v. Austrey*, 6 M. & S. 319, 321. See further upon judicial and ministerial acts. 11 & 12 Vict. c. 44, ss. 3, 4, 6; 15 Vin. Ab., tit. "Judicial;" *R. v. Ledgard*, 8 A. & E. 545; *Wilder v. Morris*, 22 L. J., M. C. 4; *R. v. Law*, 7 E. & B. 366; 26 L. J., Q. B. 126; *Baker v. Cave*, 1 H. & N. 674; 26 L. J., Exch. 190; *Cooper v. Wands-*

of the common law or by statute, and such words do not enable them to act out of their jurisdiction, either in respect of its local limits or otherwise(*l*).

The following rules are deducible from the statutes which define the limits within which magistrates may act or their process be available.

County justices residing in city, &c., of exclusive jurisdiction.

I. County justices may act as such within any city or other precinct having exclusive jurisdiction, situate in, surrounded by, or adjoining to, the county, riding or division for which they are appointed. Thus, with regard to county magistrates whose residence happens to be locally situated in cities or places which are distinct in point of jurisdiction from the county at large, it is provided by 9 Geo. 1, c. 7, s. 3, "for the greater ease of justices of the peace authorized to act for any county," that "if any such justice of the peace shall happen to dwell in any city or other precinct that is a county of itself, situate in the county at large for which he shall be appointed a justice, although not within the same county, it shall be lawful for any such justice to grant warrants, take examinations, and make orders, for any matters which one or more justices of the peace may act in, at his own dwelling-house, although such dwelling-house be out of the county where he is authorized to act as a justice, and in some city or other precinct adjoining that is a county of itself."

And this provision is extended by stat. 11 & 12 Vict. c. 42, s. 6 (*m*), which enables justices acting for any county at large, or for any riding or division thereof, to act as such in any place within any city, town or other precinct,

worth, 14 C. B., N. S. 180; 32 L. J., C. P. 187. Persons exercising judicial functions, but being also required to perform ministerial acts, may be sued for damage occasioned by their neglect to perform the latter, and formerly no allegation of malice was necessary in such action. *Fergusson*

v. *Kinnoull*, 9 Cl. & Fin. 251; *Green* v. *Bucklechurch*, 1 Leon. 323.

(*l*) *Re Peerless*, 1 Q. B. 143, 153.

(*m*) This section and sects. 5 and 7 of 11 & 12 Vict. c. 42, are incorporated with 11 & 12 Vict. c. 43, by sect. 6 of the latter statute. See 26 & 27 Vict. c. 77.

being a county of itself, or otherwise having exclusive jurisdiction, and situate within, surrounded by, or adjoining to, any such county, riding or division. It is, however, expressly provided, that county justices are not to intermeddle in any matter arising within the separate jurisdictions therein mentioned.

II. A justice commissioned for two adjoining counties may act in either upon matters arising in the other, provided that he is in one of such counties at the time when he so acts. Thus by 11 & 12 Vict. c. 42, s. 5, in cases where a justice of any county, riding, division, liberty, city, borough or place (*n*), shall be also justice for a county, riding, &c. next adjoining thereto or surrounded thereby, he may act as such justice for the one county, &c. whilst he is residing or happens to be in the other of such counties, &c.

Justices for two adjoining counties.

III. The jurisdiction of justices of boroughs and corporate towns is limited by the boundaries of the respective boroughs and corporate towns, but summonses and warrants issued by borough justices may be served or executed in any county within which the borough is situate, or within any distance not exceeding seven miles from the borough (*o*).

Borough justices.

IV. For certain offences committed in the workhouses of unions comprising parishes of two or more counties,

Union work-houses.

(*n*) See as to the meaning of the words "cities, liberties and towns corporate" in stat. 21 Jac. 1, c. 23, per Maule, J., *Tarrant v. Baker*, 14 C. B. 199. See as to detached parts of counties, *post*, p. 27; and as to justices resident in "places" adjoining a highway district, see 27 & 28 Vict. c. 101, s. 29.

(*o*) 5 & 6 Will. 4, c. 76 (the Municipal Corporations Act), s. 101. The seven miles are measured by the nearest public road or way by

land or water, s. 9 (see p. 24, *n*. (*g*).)

As to the jurisdiction of county magistrates over offences committed within a borough, and *vice versa*, see *post*, p. 30. Provision is now made for cities, towns or boroughs, containing not less than 25,000 inhabitants, to appoint stipendiary magistrates (26 & 27 Vict. c. 97), but the act does not apply to London, or to any city or place incorporated under the Municipal Corporation Act.

the justices of the county in which the workhouse is situate may commit the offender to the gaol of the county, &c. in which the parish to which he is chargeable is situate (*p*).

Warrants executed on fresh pursuit.

V. A warrant to apprehend a defendant, so that he may answer to an information or complaint, may be executed not only within the county in which the justice issuing the same has jurisdiction, but, in case of fresh pursuit, at any place in the next adjoining county or place, within seven miles of the borders of the former county, without being backed (*q*).

Backing warrants.

VI. Upon proof on oath of the handwriting of a justice issuing a warrant for the apprehension of any person, a justice for any place in England or Wales, in which the person against whom the warrant was granted is or is supposed to be, may indorse the warrant authorizing its execution within his jurisdiction (*r*). The backing of a warrant for this purpose is a purely ministerial act, and the justice who issues it is responsible for an arrest under it, though the warrant is backed and executed in another county (*s*).

English warrants may be backed in Ireland, and *vice versa* (*t*).

English or Irish warrants may be backed in Scotland, and *vice versa* (*u*).

English warrants may be issued in the Isles of Man,

(*p*) 7 & 8 Vict. c. 101, s. 57; and see 11 & 12 Vict. c. 110, s. 9.

(*q*) 11 & 12 Vict. c. 43, s. 3. As to the mode of measuring distances in this and similar cases, see *Reg. v. Saffron Walden*, 9 Q. B. 76; *Jewell v. Stead*, 6 E. & B. 350; 25 L. J., Q. B. 294; *Stokes v. Grissell*, 14 C. B. 678; 18 Jurist, 519, S. C.; *Leigh v. Hind*, 9 B. & C. 774; *Atkins v. Kinnier*, 4 Exch. 776, 782; *Wood v. Dennett*, 2 Stark. R. 89; *Wing v. Earle*, Cro. Eliz. 267; see also n. (*o*), *suprà*, and stats. 6 & 7 Vict. c. 18, s. 76, and 1 & 2 Vict. c. 106.

(*r*) 11 & 12 Vict. c. 42, s. 11; 11 & 12 Vict. c. 43, s. 3.

(*s*) *Clark v. Woods and others*, 2 Exch. 395, under 24 Geo. 2, c. 55, s. 1; and see *R. v. Kynaston*, 1 East, 117; *Dews v. Riley*, 11 C. B. 434; see also 11 & 12 Vict. c. 44, s. 3. As to stating in the indorsement that the proof was on oath, see *Atkins v. Kilby*, 11 A. & E. 777, 780; *Wilkins v. Wright*, 2 Crompt. & Mees. 191; it is safer to do so.

(*t*) 11 & 12 Vict. c. 42, s. 12. See *R. v. Nesbitt*, 2 D. & L. 529.

(*u*) 11 & 12 Vict. c. 42, ss. 14, 15.

Guernsey, Jersey, Alderney and Sark, and warrants from any of those islands may be backed in England (*x*). The indorsement in these islands is to be made by any officer within the district who has jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, *i. e.* by the bailiffs of Guernsey and Jersey respectively, or, in their absence, the lieutenant-bailiffs, the judge of Alderney, or, in his absence, any jurat within the island, and the seneschal of Sark, or, in his absence, his deputy in the island (*y*). There is no provision for indorsing Scotch or Irish warrants in these islands.

Where sufficient distress is not found within the jurisdiction of the justice granting a warrant of distress, it may be backed by the justice of any other county or place (*z*).

The warrants of magistrates within the metropolitan police district (*a*), for any matter arising therein, may be executed in any part of the kingdom without indorsement (*b*), but the magistrates of the city of London have no such power (*c*).

Warrants issued by the justices for the counties of Middlesex, Surrey, Hertford, Essex and Kent, may be executed in the city of London without being backed, and *vice versa* (*c*).

Before a justice of the peace is competent to act, he is required by the 18 Geo. 2, c. 20, ss. 1, 3, under the penalty of 100*l.*, to take and subscribe an oath that he is duly qualified, besides the oath of office and the oaths of allegiance, supremacy and abjuration (*d*). This is usually

Qualification  
and oaths.

(*x*) 11 & 12 Vict. c. 42, s. 13.

(*y*) 14 & 15 Vict. c. 55, s. 18.

(*z*) 11 & 12 Vict. c. 43, s. 19.

(*a*) See as to this district, 10 Geo. 4, c. 44, s. 4, and 2 & 3 Vict. c. 47, s. 2.

(*b*) 2 & 3 Vict. c. 71, s. 17.

(*c*) See 2 & 3 Vict. c. xciv. s. 23.

(*d*) See 1 Geo. 3, c. 13; 7 Geo. 3, c. 9. For the form of the oath, see 3 Chit. Burn, J., tit. "Justices of

the Peace," ss. iv. v. See 10 Geo. 4, c. 7, s. 2, for the oath to be taken by Roman Catholics. The following cases have been decided with reference to the nature and sufficiency of the qualification required: *Pack v. Tarpley*, 9 A. & E. 468; *Woodward v. Watts*, 2 El. & Bl. 452; 17 Jur. 790; 22 L. J., M. C. 149, S. C.; *Dumelow v. Lees*, 1 C. & K. 408.

done at the quarter sessions, by virtue of a writ of *dedimus potestatem* directed to some of the acting justices for the county, empowering them to administer such oaths to the new justice. But, after having once taken the oaths, he is (by 1 Geo. 3, c. 13, s. 2) not obliged to sue out another *dedimus* to take them again by reason of any new commission: and by 7 Geo. 3, c. 9, he is also relieved from taking the oaths more than once during the same reign. The acts done by a justice, who has not duly qualified and taken the oaths at the sessions, are not absolutely void; and therefore a person executing the warrant of such justice is not answerable in an action of trespass (*f*).

Justices appointed for boroughs within the Municipal Corporations Act are not required to have any qualification by estate, nor need they be burgesses, but they must reside in the borough or within seven miles of it (*g*). Justices of the metropolitan police courts need not have any qualification by estate (*h*).



### SECT. 3.—*Of the Local Limits of the Jurisdiction, as to the Offence.*

The jurisdiction is further limited, as a general rule, to offences committed *within* the county (*i*); and though an

Offences  
within the  
county.

(*f*) *Margate Pier Company v. Hannam*, 3 B. & A. 266. See *R. v. JJ. Herefordsh.*, 1 Chit. R. 709; 9 Geo. 4, c. 17, s. 9. There is a clause of indemnity in an act of parliament every session, giving justices further time for the taking of the oaths, but this does not extend to protect those against whom final judgment has been obtained for the penalty incurred by reason of their having neglected to qualify, or to exempt them from penalties incurred for acting as justices without being qualified. See 27 & 28 Vict. c. 49.

(*g*) 5 & 6 Will. 4, c. 76, ss. 98, 101; *ante*, p. 24, n. (*g*). The 57th

section of the Municipal Corporations Act, which provides for the mayor of a borough being one of its justices and having precedence therein, does not entitle him to preside or to act as chairman at petty sessions or other meetings of the borough justices. *Ex parte Mayor of Birmingham*, 30 L. J., Q. B. 2.

(*h*) 10 Geo. 4, c. 44, s. 1.

(*i*) An offence may be committed within a county, although some of the acts which are in furtherance of it, and which by relation back render the offence complete, are committed in another county. An artificer, to whom wages were due, was paid by a note authorizing him to

act expressly directs the offence to be inquired of by justices residing near the place where it is committed (*j*), or by "any two justices" (*k*), that does not give jurisdiction to any other than justices of the *county* within which the offence was committed.

A county justice, however, may act as such in any matter relating to a detached part of another county, surrounded wholly or in part by the county for which he is appointed (*l*). By 7 & 8 Vict. c. 61, s. 1, every part of any county, which is detached from the main body thereof, shall be considered for all purposes as forming part of that county of which it is considered a part for the purpose of electing members to serve in parliament, under 2 & 3 Will. 4, c. 64 (*m*). It appears, that notwithstanding these enactments, doubts had arisen whether justices could exercise a summary jurisdiction in such detached parts of counties, and therefore it is declared by 11 & 12 Vict. c. 42, s. 7, (after reciting these doubts), that the acts of any justice shall be as good in relation to any detached part of

Detached parts of counties.

receive payment in goods. The note was delivered in one county, but the goods in pursuance thereof were given to the workman in another county. It was held that the master was rightly convicted of an offence against the Truck Act (1 & 2 Will. 4, c. 37) by the justices of the former county, as under the circumstances the offence was complete when the note was given. Mr. Justice Wightman, however, said that there might have been a difficulty if the goods had not been delivered; *Ashersmith v. Drury*, 28 L. J., M. C. 5. In proceedings before justices for the prevention or removal of nuisances (under 18 & 19 Vict. c. 121, s. 12), both the cause and effect of the nuisance must exist within the area of the local jurisdiction. *R. v. JJ. Essex*, 28 L. J., M. C. 22.

(*j*) *Talbot v. Hubble*, 2 Str. 1154; *R. v. Chandler*, 14 East, 267.

(*k*) *Re Peerless*, 1 Q. B. 143, 153.

(*l*) 2 & 3 Vict. c. 82, s. 1. The 2nd section provides for the pay-

ment of expenses incurred in the prosecution of offenders in such cases; and by the 3rd section the word "county," when used in the act, is to be taken to include every riding, division and part of a county having a separate commission of the peace. See also 21 & 22 Vict. c. 68.

(*m*) By the 26th section of this statute (2 & 3 Will. 4, c. 64), every part of any county in England and Wales which is detached from the main body of such county, "but for which no special provision is hereby made," shall be considered as forming part of that county (not being a county corporate), and of that division, riding or part whereby such detached parts shall be surrounded, or if surrounded by two or more counties, then as part of that with which it has the longest common boundary. By 7 & 8 Vict. c. 61, s. 3, provision is made for the holding of special and petty sessions of the peace in such detached parts of counties.

any county, which is surrounded in whole or in part by the county for which the justice acts, as if the same were part of the said county.

Railways  
Clauses, &c.  
Consolidation  
Acts—land in  
two jurisdic-  
tions.

So, under the several Public Works Consolidation Acts, if questions arise in respect of lands situate not wholly in one jurisdiction, they may be decided by a justice in any county, &c., in which any part of such lands is situated (*n*). And if an offence against the statutes relating to the salmon fisheries be committed in part of a river which runs between, or forms the boundary of, two adjoining counties, it is cognizable by any justice for either of such counties (*o*). An offence against the same statutes committed on the sea coast or at sea beyond the ordinary jurisdiction of any justice of the peace, is deemed to have been committed within the body of any county abutting on such coast or adjoining such sea (*p*).

Salmon  
fisheries—river  
between two  
counties.

Offence com-  
mitted at sea.

Between high  
and low water  
mark of the  
sea.

That part of the sea which lies between high and low water-mark is within and a part of the adjoining county, whether the land is or is not covered with water at the time of the committing of the offence (*q*).

Offender or  
goods being in  
a county where  
offence was  
not committed.

Some acts give jurisdiction to justices as well of the county where the offence is committed as of that in which the offender resides or is apprehended (*r*), or in which

(*n*) See the Lands Clauses (8 Vict. c. 18, s. 3), Railways (8 Vict. c. 20, s. 3), Markets and Fairs (10 & 11 Vict. c. 14, s. 3), cemeteries (10 & 11 Vict. c. 65, s. 3), Waterworks (11 & 11 Vict. c. 17, s. 3), Harbours, &c. (10 & 11 Vict. c. 27, s. 3) Clauses Consolidation Acts.

(*o*) 24 & 25 Vict. c. 109, s. 36.

(*p*) *Id.* s. 37.

(*q*) *Embleton v. Brown*, 30 L. J., M. C. 1; and see *R. v. Musson*, 8 Ell. & Bl. 900; 27 L. J., M. C. 100; and *Bennet v. Blackpool Board of Health*, 4 H. & N. 127; 28 L. J., M. C. 203. In *R. v. Cunningham and others*, 1 Bell, C. C. R. 66; 28 L. J., M. C. 66, it was decided that the Bristol Channel between the shores of Glamorganshire and Somersetshire, where it is

about ten miles across, and where the one shore is visible from the other on a clear day, is within the counties by which it is bounded. Therefore, where an offence was committed on board of a ship in this part of the Channel, about a mile from the Glamorganshire shore, it was held to be committed within the body of the county of Glamorgan. See as to boundaries of parishes extending to the *medium flum* of rivers and highways, *R. v. Llandulph*, 1 M. & Rob. 393; *R. v. Strand Board of Works*, 4 B. & S. 526, 551; 33 L. J., M. C. 33; *Id.* Q. B. 299.

(*r*) See as to indictable offences, 11 & 12 Vict. c. 42, ss. 1, 3; 24 & 25 Vict. c. 96, s. 114; and Archbold's Criminal Pleading and Evidence, c. 1, s. 3.



goods are found. Thus, the stat. 11 Geo. 2, c. 19, against the fraudulent removal of goods by tenants, empowers the landlord to exhibit a complaint before two justices of the county, &c. "residing near the place whence such goods were removed, or near the place where the same are found." Under these words it has been held, that if the goods be removed out of one county into another, the complaint may be made to two justices of the latter county (s).

The penalties also imposed by the County Court Act (9 & 10 Vict. c. 95, s. 130), and not otherwise especially provided for, may be recovered before any justice having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed.

For offences against the excise laws, jurisdiction is given by the 7 & 8 Geo. 4, c. 53, s. 65, to any two justices of the county where the offender is found or the goods are seized, &c. (t).

By the Merchant Seamen's Act, 1854, (17 & 18 Vict. c. 104, s. 520,) for the purpose of giving jurisdiction under it, every offence mentioned in it shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be (u).

Offences against the customs committed on the high seas are deemed to have been committed where the offender is "taken, brought or carried, or where he is found, and in such cases local and county justices have a concurrent jurisdiction" (x). As jurisdiction must always appear upon the face of summary proceedings (y), a con-

(s) *R. v. Morgan*, Cald. 158.

(t) Where the offence is committed, or the offender found, or the goods seized, within the limits of the chief office of the inland revenue in London, the information should be laid before the commissioners of inland revenue or a metropolitan police magistrate; see 15 & 16 Vict. c. 61.

(u) See "Shipping" in Appendix.

(x) 8 & 9 Vict. c. 87, s. 95; 24 & 25 Vict. c. 96, s. 115; and c. 97, s. 72.

(y) See *Hollingsworth v. Palmer*, 4 Exch. 267; *R. v. Totness*, 11 Q. B. 80; *R. v. Manchester and Leeds Railway Company*, 8 A. & E. 413; and Index, tit. "Jurisdiction."

viction for an offence committed on the high seas, where *primâ facie* justices have no jurisdiction, must show the special facts which give it (z). Thus, where the offenders were taken on board a smuggling boat within the harbour of Folkestone, which had an exclusive local jurisdiction, and were afterwards taken with the boat to the port of Dover, and convicted before two justices of that port and town, the conviction only stating that they had been found in a boat in the harbour of Folkestone, was held to be bad, as not showing jurisdiction (a). The justices of Folkestone, it seems, alone had authority to convict, as being the justices who resided near to the *first* port or place into which the vessel was carried.

In a later case it was held, under similar provisions, that the magistrates at the first place on land to which the party was carried had jurisdiction to try the offence, although the boat had been seized in a part of a river where other justices had jurisdiction (b).

#### Accessories.

Accessories may be convicted where the principal may be convicted, or where the offence of aiding, abetting counselling or procuring was committed (c).

#### Exclusive liberties.

Although the authority of county justices is confined to the limits of the county for which they are named, yet it does not necessarily extend to all places within the county, if there be any district therein which possesses a separate and *exclusive* jurisdiction (d).

The words of the commission, however, "as well within liberties as without" (e), are held to give the justices for the county jurisdiction in such boroughs and towns corporate as are not counties of themselves (f), though they have a magistracy of their own, unless the charter by which they are constituted imports an express exclusion

(z) *Re Peerless*, 1 Q. B. 143, 154.

(a) *Kite and Lane's case*, 1 B. & C. 101.

(b) *Re Nunn*, 8 B. & C. 644.

(c) 11 & 12 Vict. c. 43, s. 5.

(d) Plow. 37; Lamb. 48; Dalt. c. 6, s. 7. See *ante*, p. 22.

(e) See the form of the commission, 3 Burn, J., tit. "Justices of the Peace."

(f) Crompt. 8. See *Arnold v. Gaussen*, 8 Exch. 463; *Arnold v. Dimsdale*, 2 El. & B. 580; 22 L. J., M. C. 161.

of the county magistrates, by a clause of *ne intromittant* (g). And, even if the charter contain such a clause, yet, unless the borough has a separate court of quarter sessions, the county justices have jurisdiction within it (h). If, however, the borough was exempt from their jurisdiction before the passing of the Municipal Corporations Act (9th Sept. 1835), and there is also a separate court of quarter sessions, the county justices are still excluded from it (i). There is no doubt that the crown may grant commissions of the peace for any particular district in a county; nor that such subdivision may have justices of its own, whose authority excludes the jurisdiction of the justices for the county at large (h). But the exclusion of the county magistrates has always been jealously regarded, and nothing but express words are deemed capable of having that effect (l). Therefore, where a borough had possessed an exclusive jurisdiction under two successive charters, containing *non intromittant* clauses, and a third charter vested the authority of justices of the peace in the mayor, bailiffs, and burgesses, *in tam amplis modis et consimilibus modo et formá prout præantea in eodum burgo usitatum et consuetum fuit*, it was held, that, notwithstanding such reference to the former charters, the county magistrates could not be excluded; inasmuch as their jurisdiction was not taken away by express terms (m).

In such cases, therefore, the magistrates of the borough and the county justices possess concurrent jurisdiction in the borough (n).

(g) *Id. ib.* See also *Were v. Devon*, 34 L. J., M. C. 47, and *R. v. East Looe*, 31 L. J., M. C. 245.

(h) 5 & 6 Will. 4, c. 76, s. 111; and see *Candlish v. Simpson*, 1 B. & S. 357; 30 L. J., M. C. 178; 2 Hale, P. C. 47; 2 Hawk. P. C. c. 8, ss. 47, 48. It is not necessary that a borough should have a separate court of quarter sessions in order to be a "town corporate" within the Alehouse Licensing Act, 9 Geo. 4, c. 61, s. 1; *Brown v. Nicholson*, 5 C. B., N. S. 468; 28 L. J., M. C. 49. Notice of licensing meeting by borough and

county justices; *Id.*

(i) 5 & 6 Will. 4, c. 76, s. 111; and see *R. v. Bridgewater*, 10 A. & E. 711; *R. v. St. Maurice*, 16 Q. B. 908; *R. v. Sutcliffe*, 13 Q. B. 833.

(k) *R. v. Sainsbury*, 4 T. R. 456; *Blankley v. Winstanley*, 3 T. R. 279; *Talbot v. Hubble*, 2 Str. 1154; *Arnold v. Gausson*, and *Arnold v. Dimsdale*, *supra*.

(l) 4 T. R. 456; 3 T. R. 287; 8 Exch. 463, 476, 478.

(m) 3 T. R. 279.

(n) 4 T. R. 456.

But where the jurisdiction of the county justices is taken away by express and adequate words in the charter for that purpose, and there is a separate court of quarter sessions, any act of theirs within the franchise is not only a contempt, but is wholly void (*o*); and, notwithstanding the doubt intimated by Lord *Hale* and Mr. Serjeant *Hawkins* (*p*), who make it a question whether the act of the county justices be void, or only such as subjects them to punishment as for a contempt of the king's prohibition, the law seems to be now settled by express authorities of a more recent date (*q*).

The union of liberties with the counties in which they are situate is facilitated by 13 & 14 Vict. c. 105 (*r*).

By the Municipal Corporations Act (5 & 6 Will. 4, c. 76), districts were added to several boroughs, but it was doubtful whether the borough justices could execute local acts of parliament, which gave jurisdiction to the county justices within those districts. By a later statute (*s*), however, all the powers of county justices, by virtue of such local acts, were transferred to the borough justices (*t*); and by 13 & 14 Vict. c. 91, s. 9, justices of a city or borough are to have the same jurisdiction over offences committed within the city or borough as county justices have by virtue of any local or general act of parliament.

Under the Truck Act (1 & 2 Will. 4, c. 37, s. 22), county magistrates may act in boroughs where borough magistrates are disqualified by the statute, and in such case the complaint may be heard at any petty sessions not exceeding twelve miles from the place where the offence was committed.

Besides the separate jurisdiction of boroughs, towns corporate, and cities which are counties of themselves (*u*),

(*o*) *Talbot v. Hubble*, 2 Str. 1154.

(*p*) 2 Hawk. P. C. 48, 8th ed.; 2 H. H. 47.

(*q*) *Talbot v. Hubble*, 2 Str. 1154, which is recognized as established law in the subsequent cases of *Blankley v. Winstanley*, 3 T. R. 279, and *R. v. Sainsbury*, 4 Id. 456.

(*r*) See sects. 4 and 10.

(*s*) 7 Will. 4 & 1 Vict. c. 78, s. 31.

(*t*) *R. v. Sutcliffe*, 13 Q. B. 833.

(*u*) The courts will take judicial notice that certain cities are counties of themselves. *R. v. St. Maurice*, 16 Q. B. 908.

there are also other districts, or subdivisions of counties, which have distinct magistrates, such as the divisions of Lincolnshire, the ridings of Yorkshire, the district of the Isle of Ely, &c. It may be proper, therefore, to notice, that with regard to remedial statutes intended for the benefit of the kingdom at large, and which are appointed to be executed by "any justices of the *county, city, or town corporate*, where the offence may be committed," the effect of such a provision is held to be, to give jurisdiction to all persons acting as justices in the district or division where the offence is committed, though that particular kind of district or division be not among those enumerated (*x*).



SECT. 4.—*Of a qualified Jurisdiction, as to Number and Description of Justices.*

The number of justices requisite to the valid exercise of a summary authority out of sessions depends entirely upon the particular acts of parliament conferring the authority. An authority given by statute to *two* cannot be executed by *one* justice (*y*), but if given to one justice, it may be executed by any greater number (*z*). If the complaint be directed to be made to any justice, though the statute should require the final determination to be by two, the complaint is well lodged before one (*a*).

And now by 11 & 12 Vict. c. 43, s. 29, one justice may in all cases receive an information or complaint and grant a summons or warrant thereon, and issue a summons or

Number necessary.

11 & 12 Vict. c. 43, ss. 12, 29.

(*x*) *R. v. Stevens*, Cald. 302.

(*y*) Dalt. c. 6; 4 Co. 46. It is said by Dalton, cap. 6, "That though a statute appoints a thing to be done by two or more, if the offence be any misdemeanor or matter against the peace, then, upon complaint made of the offence to any one of the justices, it seemeth that one of those justices may grant out his warrant to attach the offender, and bring him before

the same, or any other justice, to find surety for his appearance at the sessions. But one justice alone may not in anywise meddle to hear and determine."

(*z*) *Hatton's case*, 2 Salk. 477; Dalt. c. 6, s. 8; *R. v. Weale*, 5 C. & P. 535.

(*a*) *Ware v. Stanstead*, 2 Salk. 488.

warrant to compel the attendance of any witnesses, and do all other necessary acts preliminary to the hearing, even where by the statute in that behalf the information or complaint must be heard and determined by two or more justices (*a*). So, by the same section, after the case has been heard and determined, one justice may issue all warrants of distress or commitment thereon, and it is not necessary that the justice who so acts before or after the hearing should be the justice or one of the justices by whom the case is heard and determined (*b*); and, by sect. 12, every information or complaint is to be heard and determined by one, two, or more justices as shall be directed by the statute upon which the information or complaint is framed or such other statute as there may be in that behalf, and if there be no such direction, then the information or complaint may be heard and determined by one justice.

Metropolitan  
police, city and  
stipendiary  
magistrates.

Metropolitan police magistrates, city of London magistrates, and stipendiary magistrates have within their jurisdiction power in most cases to do alone whatever is authorized to be done by one or more justices (*c*).

Concurrence of  
justices.

Wherever the concurrence of two is requisite for any judicial act, they must be present and acting together

(*a*) This provision will not, it seems, apply where the statute under which the proceedings are taken expressly requires more than one justice to take the information, or to do any other of the specified acts; *R. v. Griffin*, 9 Q. B. 155, upon similar words in 3 Geo. 4, c. 23. See also *R. v. Russell*, 13 Q. B. 237.

(*b*) See *Jones v. Gurdon*, 2 Q. B. 600, 613; *Tarry v. Newman*, 15 M. & W. 645, 654; *Re Ramsden*, 3 D. & L. 748; *R. v. Wilcock*, 7 Q. B. 317, 339.

(*c*) 11 & 12 Vict. c. 43, ss. 33, 34; 21 & 22 Vict. c. 73; 2 & 3 Vict. c. 71, s. 14; 3 & 4 Vict. c. 84. By 11 & 12 Vict. c. 43, s. 34, the Lord Mayor of London or any alderman of the said city, sitting at the Mansion House or Guildhall

justice rooms, may do alone any act which by any law then in force or by any law, not containing an express enactment to the contrary, thereafter to be made is directed to be done by more than one justice. By 3 & 4 Vict. c. 84, s. 6, two metropolitan justices have in general the same power as a metropolitan police magistrate; see also sect. 15. It has been lately held that sect. 13, which gives a metropolitan police magistrate power to send a constable to view deserted premises for the purpose of giving possession under 11 Geo. 2, c. 19, does not give the same power to two metropolitan justices or to an alderman of the city of London; *Edwards v. Hodges*, 15 C. B. 477; 1 Jur., N. S. 91; 24 L. J., M. C. 81.

during the whole of the hearing and determination of the case (*d*).

With regard to the power of the justices *in sessions* to originate convictions on penal statutes, the rule laid down by *Holt*, C. J., is, that if authority be given to two justices to do an act, and from that act there is no appeal, it may commence at the sessions; but if an appeal be given, it cannot begin there (*f*).

Justices in sessions originating convictions.

Though the majority of penal statutes give authority generally to all justices of the peace, without distinction, which implies an equal power in all, within the limits of their respective commissions (*g*), yet, as some acts point out those of a particular description, it may be proper to take notice in what cases such selection is *imperative*, and excludes all others, and where it is considered to be merely *directory* (*h*).

Particular description of justices.

It seems consistent with principle, as the power vested

Next justice.

(*d*) 11 & 12 Vict. c. 43, s. 29; and see *Billings v. Prinn*, 2 Bl. Rep. 1017; *R. v. Howarth*, 2 Bott. 640; *R. v. St. Aldwins*, Burr. Sess. C. 136; *R. v. Arnold*, 1 Str. 101; *R. v. Great Marlow*, 2 East, 244; *Battye v. Gresley*, 8 Id. 319; *R. v. Forrest*, 3 T. R. 38; *R. v. Hamstall-Ridware*, 3 T. R. 380; *R. v. Stotfold*, 4 Id. 596; *R. v. Llanwinio*, Id. 473; *R. v. Winwick*, 8 Id. 454; *Penney v. Slade*, 5 Bing., N. C. 319, 323; *Re Lord*, 1 Jur., N. S. 893; Bac. Ab. vol. 4, p. 618, tit. "Justices." This is analogous to the duty of arbitrators in making an award; *Wade v. Dowling*, 4 El. & Bl. 44; 18 Jur. 728; *Little v. Newton*, 2 M. & G. 351; *Stalworth v. Inns*, 13 M. & W. 466; *Peterson v. Ayre*, 14 C. B. 665; *Watson on Awards*, 101; *Russell on Arbitration*, 209 (3rd ed.) So where a view is required to be had by two justices, it should be a joint view; *R. v. JJ. Cambridgesh.*, 4 A. & E. 111. Where a verbal adjudication was made by two justices in petty sessions and the formal order, being afterwards drawn up, was signed by one on the 1st of March,

and by the other on the 3rd, it was held to be valid; *Ex parte Johnson*, 32 L. J., M. C. 193.

(*f*) *R. v. Randle*, 2 Salk. 470; *R. v. Bond*, 2 Show. 503; *R. v. Boughton*, 1 Ld. Raym. 426; 5 Burn, J. tit. "Sessions," 973.

(*g*) Words in a statute authorizing "any two justices" to act, do not in all cases give jurisdiction to all justices in the county. See *Re Peerless*, 1 Q. B. 143.

(*h*) Whether words used in a statute are compulsory or only directory, depends on the subject-matter to which they are applied, and on the general scope and object of the statute, rather than on the use of any particular language in it. Words relating to the mode and time of procedure are in general words of direction only, unless negative or prohibitory words are used; see *Cole v. Green*, 6 M. & G. 872; *R. v. Sneyd*, 5 Jur. 962; *R. v. Sparrow*, 2 Str. 1123; *Wolverhampton Waterworks Company v. Hawksford*, 7 C. B., N. S. 795; 29 L. J., C. P. 121; *R. v. Mayor of Rochester*, 7 E. & B. 910; 27 L. J., Q. B. 45; *Wishart v. Fowler*,

in justices of the peace is of a special kind, that, where any matter is referred to a particular description of justices, the authority of all others should be excluded by that express designation (*i*). And therefore, where a statute refers the matter to the *next* justice, no other but the one answering that description has any authority (*k*).

*In or near the place where, &c.*

Justices of the division.

However, it has been held, in construing the acts which mention justices *in or near* the place where the offence was committed, that, notwithstanding that description, any justice of the county may take cognizance of the matter (*l*). The same construction has been put upon the words justices of the *division*, which are held to be merely directory, and not restrictive or qualificatory (*m*), and

4 B. & S. 674; 33 L. J., Q. B. 125; *Stapleton v. Haymen*, *Id.* Exc. 170; *Scott v. Durant*, 34 L. J., C. P. 81; or the words create a condition precedent to the exercise of judicial power; see *Christophersen v. Lotinga*, 33 L. J., C. P. 121. In *Pearse v. Morris*, 2 A. & E. 84, 96, Mr. Justice Taunton said, "a clause is directory, where the provisions contain mere matter of direction and nothing more, but not so, where they are followed by words of positive prohibition." *Prima facie* "may" or "it shall and may be lawful," are directory words, and should be so interpreted, unless the subject matter shows that it must have been intended that the exercise of the power should be imperative; *Per Crompton, J.*, in *Re Newport Bridge*, 29 L. J., M. C. 53; and see *R. v. Bailiffs of Eyre*, 1 B. & C. 86; *Girdlestone v. Allen*, *Id.* 61. "May" held compulsory in *McDougall v. Paterson*, 11 C. B. 755; 21 L. J., C. P. 27; and see *Crake v. Powell*, 2 El. & B. 210; 21 L. J., Q. B. 183: "shall be lawful" held directory in *Reg. v. The Bishop of Chichester*, 29 L. J., Q. B. 23. The question, which is one of practical importance, is discussed in the notes to *Collins v. Blantern*, 1 Smith's L. C. 337 (5th ed.); see also, *Dwarris on Statutes*, vol. ii. p. 712, *et seq.*; *Chitty's Statutes*, by

Welsby, vol. i., p. 525, n. (*a*); vol. ii. p. 438, n. (*b*); 5 C. B. 654, n. (*a*); *R. v. Cousins*, 4 B. & S. 849; 33 L. J., M. C. 87, 88; *Boulting v. Boulting*, *Id.* Div. 81; *Re Farraday*, 31 L. J., Div. 7; *Thompson v. Harvey*, 4 H. & N. 254; 28 L. J., M. C. 163; *Costar v. Hetherington*, El. & El. 802; 28 L. J., M. C. 198; *Agar v. Atheneum Assurance Society*, 3 C. B., N. S. 725; 27 L. J., C. P. 95, 101; *Bowman v. Blyth*, 7 Ell. & Bl. 26, 47; 27 L. J., M. C. 21; *R. v. Scott*, 25 L. J., M. C. 128, 130; *R. v. J.J. Yorksh.*, 7 A. & E. 591; *R. v. Bermondsey*, 2 E. & B. 809; *Nowell v. Mayor, &c. of Worcester*, 9 Exc. 457; *Charter v. Greame*, 13 Q. B. 216; *Mason v. Barker*, 1 C. & K. 107; *Warden of Dover Harbour v. London, Chatham and Dover Railway Company*, 30 L. J., Canc. 474; *Brandling v. Plummer*, 26 *Id.* 326, 329; *Wright v. Maunder*, 4 Beav. 512; *Cole v. Cole*, 6 Hare, 517.

(*i*) *Dalt. c. 27, s. 8.*

(*k*) *Sander's case*, 1 Wms. Saund. 262; 2 Keb. 559: "neighbouring justice," 24 & 25 Vict. c. 96, s. 103.

(*l*) 2 Keb. 559; 3 Keb. 383; 1 Wms. Saund. 263; Bac. Ab. tit. "Justices of the Peace," (E.) 5. See *Ex parte Kite*, *ante*, p. 30.

(*m*) *Ashley's case*, 2 Salk. 480; 3 *Id.* 258, S. C.; *Anon.*, 2 *Id.* 473; *Anon.*, 12 Mod. 546. See *Sun-*



therefore the act may be executed by any justice of the county. It is the same where the statute specifies justices *in or near* the parish or division (*n*). And if anything be directed to be done “*in the division by magistrates acting for the division*,” any magistrate of the county present at a meeting in the division is competent for that purpose (*o*), but it must appear on the face of the proceedings that the meeting was held within the division (*p*). By the Public Health Act (*q*) the justices who execute its provisions are to be “acting for the place in which the matter or any part of the matter, as the case may be, requiring their cognizance arises,” and this, in the case of county justices, requires them to be acting for the petty sessional division in which the matter arises (*r*). And by 7 & 8 Vict. c. 101, s. 2, the application for an order of affiliation must be made to justices acting for the petty sessional

*der's case*, 1 Wms. Saund. 263 d; *R. v. Chandler*, 14 East, 267; *ante*, p. 27; *R. v. Waghorn*, 1 Ell. & Bl. 647. In *R. v. Rawlins*, 8 C. & P. 439, an indictment for perjury committed on the hearing of an information under the Beer Act, 11 Geo. 4 & 1 Will. 4, c. 64, s. 15, was held to be defective for not stating that the justices were acting for the division or place in which the beer-house was situate.

(*n*) *R. v. Price*, Cald. 305; *R. v. Loxdale*, 1 Burr. 447. Before proceeding against hundredors, the party damnified or his servant, who had the care of the property damaged, must, within seven days after the offence, go before some justice of the peace, “residing near” and having jurisdiction over the place where the offence was committed, and state the name of the offenders, &c. (7 & 8 Geo. 4, c. 31, s. 3.) Under nearly similar words in 27 Eliz. c. 13, it was held sufficient, to go before a justice who lived twenty miles from the place of the offence, although many justices lived nearer, the statute being only directory. Bull, N. P. 185 d.

(*o*) *R. v. Price*, Cald. 307, per

Ashurst, J.; *R. v. Rawlins*, 8 C. & P. 439.

(*p*) In *R. v. Martin*, 2 Q. B. 1037, it was held that an order of justices at special sessions, under 4 & 5 Vict. c. 59, s. 1, must show on the face of it that the road is within the division for which the special sessions are held; *R. v. JJ. Herefordsh.*, 2 D. & L. 952: amendment allowed in this respect; *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. See *Wray v. Toke*, 12 Q. B. 492, 506, where a conviction under the Beer Acts (11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85) was held valid, although it did not state the beer-house to be within the division for which the justices were acting, the statutory form given by the act not containing such statement. In that case also, the parish in which the house was stated to be, and the division, were of the same name. See *R. v. Preston*, 12 Q. B. 816; *R. v. Hickling*, 7 Q. B. 880; *Ex parte Allison*, 10 Exc. 561.

(*q*) 11 & 12 Vict. c. 63, s. 2.

(*r*) *R. v. Brodhurst*, 32 L. J., M. C. 168.

**Boundaries.** division within which the woman resides (*s*). The boundaries of the several divisions of the county justices, and the holding of their petty or special sessions, are now regulated by the 9 Geo. 4, c. 43, 6 Will. 4, c. 12, and 12 & 13 Vict. c. 18 (*t*).

**Quorum.** Many of the earlier penal statutes having required, that one of the justices empowered to act should be of the *quorum*, to remove any difficulty on that account in small liberties, it is provided by 4 Geo. 4, c. 27, that in all cases where the number of justices of the peace for any city, borough, town-corporate, franchise, liberty, or other local jurisdiction is limited, and any one, two, or more of them only are of the *quorum*, all acts done by any two or more of such justices, although neither of them be of the *quorum*, shall be valid in law, to all intents and purposes, as if they had been of the *quorum* (*u*). The effect, also, of the Boundary Act (9 Geo. 4, c. 43) is to transfer to the borough justices all jurisdiction, which the county justices before had, over places now included within the borough boundaries (*x*).

**Disqualification by interest.** Subject to the rules and restrictions above mentioned every justice of the peace is competent to exercise the summary authority committed by statute to justices of the peace generally: but that power is accompanied with this further qualification, that no magistrate, however duly authorized in all other respects, can act judically in a case wherein he is himself a party. The plain principle of justice, that no one can be a judge in his own cause, pervades

(*s*) What is a sufficient residence for this purpose; *R. v. Hughes*, 1 Dear. & B. C. C. R. 248; 26 L. J., M. C. 133.

(*t*) See 5 Burn, J., tit. "Sessions;" Chitty's Stats. by Welsby & Beavan, tit. "Sessions." Every meeting of two justices in one place, for business, in itself constitutes a petty sessions; *R. v. Rawlins*, 8 C. & P. 493. It is not necessary to state in a warrant of commitment, under 11

& 12 Vict. c. 43, that the convicting justices were sitting at a place where the petty sessions were usually held; *Ex parte Allison*, *supra*.

(*u*) See *R. v. Overseers of Llangian*, 4 B. & S. 249; 32 L. J., M. C. 225.

(*x*) *R. v. JJ. Gloucester*, 6 Nev. & Man. 115; see also 5 & 6 Will. 4, c. 76; 13 & 14 Vict. c. 91, s. 9, and 1 Chitty's Stats. by Welsby & Beavan, tit. "Corporations."

every branch of the law, and is as ancient as the law itself (*y*). This is so fundamental a maxim, as not to be overruled by any prescription (*z*). Lord *Coke*, and Lord *Holt*, both go so far as to question, whether even an act of parliament has power to ordain that the same person shall be both party and judge (*a*).

The question whether proceedings tainted by the interest of the judge are absolutely void or voidable only, was lately decided in the House of Lords (*b*). The Lord Chancellor had granted relief sought by a company in which he was a shareholder. It was held that he was disqualified on the ground of interest from sitting as judge in the cause, and that his decree must be reversed, but it was at the same time decided to be merely voidable, and not void (*c*). Mr. Baron *Parke*, delivering the unanimous opinion of the Judges, said: "If this had been a proceeding in an inferior Court, one to which a prohibition might go from a Court in Westminster Hall, such a prohibition would be granted, pending the proceedings, upon an allegation that the presiding Judge of the Court was interested in the suit; whether a prohibition could go to the Court of Chancery it is unnecessary to consider. If no prohibition should be applied for, and in cases where it could not be granted, the proper mode of taking the

(*y*) Co. Litt. 141, a; 8 Co. 118; Dalt. c. 173.

(*z*) *Ib.*; Hob. 87.

(*a*) 8 Co. 118; *Bonham's case*, Hob. 87; 12 Mod. 687; *Mayor of London v. Wood*.

(*b*) *Dimes v. Grand Junction Canal Company*, 3 H. of L. Cas. 759—785.

(*c*) The decree affirmed an order of the Vice-Chancellor, who was held to be a judge not dependant upon the Lord-Chancellor, although subordinate to him, and consequently the disqualification of the Lord Chancellor did not affect the validity of the order. But if the original order had been bad, the judgment of affirmance would have been bad also, although given by a disinterested

judge. Thus it has been recently held, in *Reg. v. Hammond and another*, (9 L. T., N. S. 423, 12 W. R. 208,) that an order of quarter sessions confirming an order of interested justices should be quashed, together with the original order, although the justices at quarter sessions had no interest in the matter. Interest in deputy-recorder, *R. v. Recorder of Cambridge*, 8 El. & Bl. 637; 27 L. J., M. C. 160; interest in sheriff invalidating act of under-sheriff, *R. v. Sheriff of Warwicksh.*, 24 L. T. 211. The objection is not waived by reason of its not having been taken at the hearing, unless the party objecting was then aware of the judge's interest. *Id.*

objection to the interest of the Judge would be in Courts of Common Law, by bringing a writ of error for error in fact, and assigning that interest as cause of error. The former course was stated to be proper in the case of *Brooks v. Earl of Rivers* (*d*), it being suggested that the Earl of *Derby*, who was Chamberlain of *Chester*, had an interest in the suit; and the Court held that where the Judge had an interest, neither he nor *his deputy* can determine a cause or sit in Court, and if he does, a prohibition lies. The latter course was adopted in the case of *The Company of Mercers and Ironmongers of Chester v. Bowker* (*e*), where it was assigned for error in fact on the record of a judgment for the Company of Mercers in the Mayor's Court of *Chester*, that after verdict, and before judgment, one of the Company of Mercers became Mayor, and for that reason the judgment was reversed in the Court of Quarter Sessions, and that judgment of reversal affirmed in the King's Bench. In neither of these cases was the judgment held to be absolutely void. Till prohibition had been granted in one case, or judgment reversed in the other, we think that the proceedings were valid, and the persons acting under the authority of the Court would not be liable to be treated as trespassers. The many cases in which the Court of King's Bench has interfered (and may have gone to a great length), where interested parties have acted as magistrates, and quashed the orders made by the Court of which they formed part, afford an analogy. None of these orders is absolutely void; it would create great confusion and inconvenience if it was. The objection might be one of which the parties acting under these orders might be totally ignorant till the moment of the trial of an action of trespass for the act done (*f*); but these orders may be quashed after being removed by *certiorari*, and the Court shall do complete justice in that respect. We think

(*d*) Hardr. 503.

(*e*) 1 Str. 639.

(*f*) See the observations of the

Lord Chancellor, in *Scadding v. Lorrant*, 3 H. of L. Cas. 447.

that the order of the Chancellor is not void; but we are of opinion, that as he had such an interest which would have disqualified a witness under the old law, he was disqualified as a Judge; that it was a voidable order and might be questioned and set aside by appeal, or some application to the Court of Chancery, if a prohibition would not lie" (g).

There are also instances upon record of magistrates being punished by attachment, for acting as judges in matters in which they themselves were parties (h). And where a criminal information was moved for against a justice of the peace, who, upon a complaint preferred before him in his magisterial capacity by his own bailiff, convicted and sentenced to punishment a labourer employed on his own farm, for refusing to perform his work according to his contract, the Court of Queen's Bench granted a rule to show cause, and only declined making it absolute from a consideration that, under all the circumstances, the steps taken appeared to proceed from an error in judgment, rather than a bad motive; but at the same time they severely reprehended the conduct of the magistrate, in sitting in judgment upon a charge in which he himself was to be considered as the real complainant, though in form the complaint was preferred by his bailiff; and

(g) See *Dimes' case*, 3 H. of L. Cas. 759; 12 Beav. 63; 2 Macn. & G. 285; 14 Q. B. 554; *Lancaster Railway Company v. Heaton*, 8 El. & Bl. 952; 27 L. J., Q. B. 195; *R. v. Recorder of Cambridge*, 8 El. & Bl. 637; 27 L. J., M. C. 160; *R. v. Aberdare Canal Company*, 14 Q. B. 854; *R. v. Cheltenham Commissioners*, 1 Q. B. 467; *R. v. JJ. Surrey*, 1 B. C. C. 70; 16 Jur. 641; 21 L. J., M. C. 195; *S. C. Fuller v. Brown*, 3 New Sess. Ca. 603; *R. v. JJ. Monmouth*, 8 B. & C. 137; *R. v. Yarpole*, 4 T. R. 71; 16 Geo. 2, c. 18, s. 3; *R. v. Gudridge*, 5 B. & C. 459; *R. v. Great Yarmouth*, 6 Id. 646; *Great Charte v. Kennington*, 2 Str. 1173; 12 Mod. 674, 687; Salk. 398; Hob. 87; Burr. Sett. Cas. 194,

and *Fozham Tything*, 2 Salk. 606. It should be noted, that in the case of *The Mayor of Norwich*, 2 Roll. Ab. 93, in which a judgment in the Mayor's Court was affirmed upon a writ of error, though the mayor himself was the plaintiff, the objection did not appear upon the record; and that this was the true reason of the judgment, and the only one upon which it can be supported, is sufficiently proved by *Holt, C. J.*, 12 Mod. 688, and by the opinion of the other judges in the same case; *Ib.* 673, 675.

(h) *The Mayor of Hereford's case*, per *Holt, C. J.*, 2 Ld. Raym. 766; 1 Salk. 201, 396; and see 2 Rol. Abr. 93, tit. "Judges," pl. 11.

declared that it was a most abusive interpretation of the law, that a man should presume to erect himself into a criminal judge over the servants on his own farm for an offence against himself. The Court also ordered him to pay all the costs of the application (i).

Not only should persons interested in a decision take no part in it, but they should also avoid giving any ground for the belief that they influence others in arriving at a decision. Upon the trial of a parish appeal, one of the justices, who was a rated inhabitant of the appellant parish, was on the bench during the hearing, and in the course of the proceedings referred the chairman of the quarter sessions to some of the documents put in evidence. Upon an observation being made that he was interested, he stated that he should take no part in the decision, but he remained on the bench in Court until the judgment, which was in favour of the appellants, was given. It was sworn that he did not vote or give any opinion upon the question, nor influence the decision of the other justices, but the order of sessions was held to be invalid by reason of his presence and interference (k).

The Court will not enter into a discussion as to the extent of influence exercised by the interested party, and it is no answer to the objection, that there was a majority in favour of the judgment without reckoning his vote, nor that he

(i) *R. v. Hoseason*, 14 East, 606. There seems to be no doubt but that such conduct in a magistrate exposes him to proceedings by information, although no malicious or corrupt motive may be expressly ascribed to him. Instances of applications of the kind mentioned in the case last cited have since occurred, and on all occasions the Court of Queen's Bench has expressed its strong disapprobation of justices sitting in judgment upon matters in which they are either directly or indirectly interested.

(k) *R. v. JJ. Suffolk*, 18 Q. B. 416;

21 L. J., M. C. 169; and see *R. v. JJ. Hereford*, 2 D. & L. 500. In the former case Lord Campbell, C. J., said, "If he had done his duty, he would have at once voluntarily withdrawn from the court. That is the example set by judges in Westminster Hall. Lord Holt, upon the hearing of a question in which he was personally interested, left the bench and sat by the side of his counsel (see *Bridgman v. Holt*, Show. Parl. Cas. 111); and I did so in the judicial committee of the Privy Council, when I was chancellor of the Duchy of Lancaster."

withdrew before the decision, if he appear to have joined in discussing the matter with the other magistrates (*l*).

If, however, a party in the case, knowing of the interest, consent to the interested magistrate acting, he cannot afterwards raise any objection upon this ground (*m*); and in some few cases, from necessity, an interested party is allowed to adjudicate, it being considered a less evil that he should do so than that there should be a failure of justice altogether (*n*). Thus if a magistrate should be assaulted or abused to his face, (while engaged in the execution of his duty,) and no other magistrate be present, it seems that he may commit the offender until he find sureties for keeping the peace or for good behaviour, as the case may require (*o*).

Sometimes a magistrate is expressly empowered by statute to adjudicate, although to a certain extent interested in the result of the decision. Thus, a justice may act in parochial matters (except appeals), though rated within the parish (*p*), and even in appeals against a poor rate, although rated or liable to be rated in some other parish in the Union than that for which the rate appealed against is made (*q*), and also in matters in which the board of guardians, of which he is an ex-officio member, is interested (*r*). So by the Public Health Act (*s*), justices being also members of the local board of health may exercise at petty sessions the

(*l*) *R. v. JJ. Hertford*, 6 Q. B. 753.

(*m*) *R. v. Cheltenham Commissioners*, 1 Q. B. 467. See *R. v. Rishton*, *Id.* 479.

(*n*) Under such circumstances, "it becomes the unfortunate duty of the court to act as both party and judge," per Lord Denman, *C. J. Carus Wilson's Case*, 7 Q. B. 1015; *Dimes' Case*, 12 Beav. 63; 14 Q. B. 554; *Great Charte v. Kennington*, 2 Str. 1173.

(*o*) *Dalton*, c. 173; *R. v. Revel*, 1 Str. 420, 421.

(*p*) 16 Geo. 2, c. 18, s. 1.

(*q*) 27 & 28 Vict. c. 39, s. 6.

(*r*) 5 & 6 Vict. c. 57, s. 15.

(*s*) 11 & 12 Vict. c. 63, s. 132. See 17 & 18 Vict. c. 95; *Le Feuvre v. Lankester*, 3 El. & Bl. 530. By 27 Vict. c. 10, no justice shall be disqualified from acting in the granting or transferring of licences to keep inns, alehouses, &c., or in any discussion or adjudications relating to the same, by reason of his making and mixing malt under the provisions of that Act (for the making of malt duty free to be used in feeding animals), or of his dealing in selling or retailing malt so made and mixed.

jurisdiction vested in them under that act; and, unless objected to at the hearing, justices may act in cases (other than appeals) arising under the Nuisances Removal Act, 1855, although they may be members of the local authority to execute the Act, or be liable to contribute to the fund out of which the costs of executing the Act are defrayed (*t*).

On the other hand the legislature has in some cases expressly guarded against the danger of entrusting a summary power to persons interested; and it is observable, that the first statute, which clearly and unequivocally gives the summary authority to justices to convict upon examination without trial, viz. the 43 Eliz. c. 7, against robbing of orchards, &c. (*u*), specially provides (sect. 3) "that no justice or other head officer do execute this statute, for any of the offences there mentioned done to himself, unless he be associated with, and assisted by, one or more other justices of the peace whom the offence doth not concern." A similar exception, is introduced into the acts 11 Geo. 2, c. 19, s. 4, and 3 Geo. 4, c. 77, s. 18, for preventing frauds by tenants (*x*). Upon this principle, *brewers* are prohibited by 24 Geo. 2, c. 40, and 9 Geo. 4, c. 61, s. 6, from acting in the laws relating to beer. The same prohibition is applied to *bakers* by 3 Geo. 3, c. 11, s. 12, 31 Geo. 2, c. 29, s. 33, 3 Geo. 4, c. 86, s. 17, and 6 & 7 Will. 4, c. 37, s. 15, as to the acts relating to bread. A like provision is inserted in the acts relating to penalties in the woollen (*y*), cotton (*z*), and dying (*a*) trades, to the collection of salt

(*t*) 23 & 24 Vict. c. 77, s. 16. When interest is too remote, *Ex parte Pettitmangin*, 33 L. J., M. C. 99, n. (3); 9 L. T., N. S. 683.

(*u*) Dr. Burn (see 5 Burn's Justice, 247 (*a*), tit. Oaths) is of opinion that this is the first statute which authorizes a conviction in a summary way; and that the former statutes, which authorize the examination and trial of offences by justices of peace, refer to the common law mode of trial by jury before

the justices in sessions.

(*x*) There is no such express provision upon this subject in 1 & 2 Vict. c. 74, for recovering possession of small tenements.

(*y*) 7 Ann. c. 13, s. 2; 7 Geo. 2, c. 25; 11 Geo. 2, c. 28, s. 10; 14 Geo. 2, c. 35, s. 4; 5 Geo. 3, c. 51, s. 4.

(*z*) 39 & 40 Geo. 3, c. 90, s. 10; 6 & 7 Vict. c. 40, s. 25.

(*a*) 13 Geo. 1, c. 24, s. 5.



duties (*b*), and embezzling ordnance and naval stores, &c. (*c*), the Inclosure Acts (*d*), the Truck Act (*e*), where the justice is engaged in any of the enumerated trades, the Army and Marine Mutiny Acts (*f*), the Companies Clauses, Lands Clauses and Railway Clauses Consolidation Acts (*g*), the Joint-Stock Companies Act (*h*), the Acts relating to the recovery of tithes and church-rates where the justice is patron of the church (*i*), the Municipal Corporation Act (*k*), and the Public Health Act (*l*).

A magistrate who is a shareholder in a railway company should not take any judicial part in enforcing its bye-laws (*m*), nor should magistrates who are members of an association for preserving fish in a river act in the conviction of persons for unlawfully taking fish from the river (*n*).

A justice of the peace, who happens to be sheriff of the county, cannot act as a justice therein during his shrievalty; if he does, his acts are void (*o*). A coroner cannot act as a justice within his county (*p*). Attornies and proctors cannot be justices for counties, but they may be for boroughs (*q*).

Disqualification from other causes.

(*b*) 13 Will. 3, c. 1, s. 18.

(*c*) 39 & 40 Geo. 3, c. 89, s. 18.

(*d*) 41 Geo. 3, c. 109, s. 39; 3 & 4 Will. 4, c. 35, s. 1; 8 & 9 Vict. c. 118, s. 159.

(*e*) 1 & 2 Will. 4, c. 37, s. 21. See s. 22, when borough magistrates disqualified.

(*f*) 15 & 16 Vict. c. 7, s. 55; 15 & 16 Vict. c. 8, s. 59.

(*g*) 8 Vict. c. 16, s. 3; 8 Vict. c. 18, ss. 3, 39; *R. v. The Sheriff of Warwicksh.*, 24 L. T. 211; *Worsley v. South Devon Railway Company*, 16 Q. B. 539; 8 Vict. c. 20, s. 3.

(*h*) 7 & 8 Vict. c. 110, s. 29.

(*i*) 7 & 8 Will. 3, c. 6, ss. 1, 4.

(*k*) 5 & 6 Will. 4, c. 76, s. 28. See *Simpson v. Ready*, 12 M. & W. 36; and *Re For*, 1 El. & El. 729; 27 L. J., Q. B. 151; *S. C.*, in error, 29 L. J., M. C. 54.

(*l*) By s. 19 (11 & 12 Vict. c. 63), no person, being a proprietor or member of a company for the sup-

ply of water, or for carrying on works of a public nature, shall be disabled from being or acting as a member of the local board of health, but no such person shall vote as a member of the said board upon any question in which such company is interested. See *Boyce v. Higgins*, 14 C. B. 1; *Le Feuvre v. Lankester*, 3 El. & Bl. 550. See also the paving act, 57 Geo. 3, c. 29, s. 125, and the act relating to acknowledgments of deeds by married women, 17 & 18 Vict. c. 75.

(*m*) *R. v. Hammond and another*, 12 W. R. 208; 9 L. T., N. S. 423.

(*n*) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98.

(*o*) 1 Mary, sess. 2, c. 8, s. 2. See also *Dalt. c. 3*; 3 Burn, J. c. 2, "Justice of the Peace."

(*p*) 2 Hawk. c. 8, s. 34, p. 46; *Dalt. c. 3*.

(*q*) 6 & 7 Vict. c. 73, ss. 33, 34.

SECT. 5.—*Priority of Jurisdiction.*

Competition of  
authority.

All the justices of each district are equal in authority ; but, as it would be contrary to the public interest, as well as indecent, that there should be a contest between different justices, it is agreed, that the jurisdiction in any particular case attaches in the first set of magistrates, duly authorized, who have possession and cognizance of the fact, to the exclusion of the separate jurisdiction of all others. So that the acts of any other, except in conjunction with the first, are not only void, but such a breach of the law as subjects them to indictment (*r*). It is not, however, necessary that the justice hearing the charge should be the same justice before whom the information was laid (*s*).

SECT. 6.—*Conditions precedent to Exercise of Jurisdiction.*

Under 43 Geo. 3, c. 59, s. 2, which authorizes justices at Quarter Sessions to order county bridges to be widened, it is an essential preliminary to the making of such an order that there should be a presentment of the insufficiency of the bridge (*t*). In some cases a certain interval must elapse before a prosecution can be commenced (*u*).

SECT. 7.—*As to the Offence.*

Where pro-  
perty, &c. is in  
question.

There is seldom any difficulty in ascertaining the offences liable to summary conviction, since each must be

(*r*) *R. v. Sainsbury*, 4 T. R. 456 ;  
*R. v. Great Marlow*, 2 East, 244.  
See *ante*, p. 33.

(*s*) 11 & 12 Vict. c. 43, s. 29 ;  
and see *Tarry v. Newman*, 15 M. &  
W. 645. It was held under the  
Divorce Act (20 & 21 Vict. c. 85,  
s. 21), that no magistrate could dis-  
charge an order protecting the pro-  
perty of a married woman deserted  
by her husband, except the magis-

trate by whom the order was made,  
(*Ex parte Sharpe*, 33 L. J., M. C.  
152), but now in case of his death,  
removal, or incapacity to act, it  
may be discharged by the magis-  
trate acting as his successor or in  
his place ; 27 & 28 Vict. c. 44.

(*t*) *Re Newport Bridge*, 29 L. J.,  
M. C. 52.

(*u*) *Post*, Sect. 9.

the subject of a special law. It may be proper, however, to mention a rule applicable to this mode of trial in general, that where property or title is in question, the jurisdiction of justices of the peace to hear and determine in a summary manner is ousted, and their hands tied from interfering, though the facts be such as they have otherwise authority to take cognizance of (x). It will be sufficient at present to notice this maxim cursorily, reserving its application to particular cases, till we have occasion to examine the matters of complaint and defence connected with our subject.

It seems that offences, which are cognizable only before magistrates, do not come within the operation of the 18 Eliz. c. 5, ss. 3, 4, which prohibits the compounding of offences; that statute being confined to offences cognizable before the Superior Courts (y). But although not within the prohibition of that statute, the policy of the Common Law does not allow the compromise of offences which are of a public nature. Thus, where a defendant was charged, under the Toleration Act, with having disturbed a dissenting congregation, which rendered him liable to be tried at the sessions, and on conviction to forfeit 20*l.* to the crown, and he was allowed by the justice to compromise with the prosecutor, this was held to be illegal as stifling a prosecution for a public misdemeanour (z). And in a recent case upon this subject, it was held by the Court of Queen's Bench and affirmed by the Court of Exchequer Chamber (a), that an

Compromise of offences.

(x) *R. v. Burnaby*, 2 Ld. Raym. 900; 1 Salk. 181; *R. v. Speed*, 1 Ld. Raym. 583; *Kinnersley v. Orpe*, Doug. 499; *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 32, S. C.; *R. v. Stimpson*, 4 B. & S. 301; 32 L. J., M. C. 208, 210; *Taylor v. Newman*, 4 B. & S. 89; 32 L. J., M. C. 186, 188; *Hudson v. M'Rae*, 4 B. & S. 585; 33 L. J., M. C. 65. See post, "Defence," and Index, "Title."

(y) *Rex v. Crisp*, 1 B. & Ald. 282.

(z) *Edgcombe v. Rodd and others*,

5 East, 294. *Le Blanc, J.*, there said (p. 303), "This, it must be remembered, was a prosecution for a public misdemeanor, and not for any private injury to the prosecutor." See also *Keir v. Leeman*, 9 Q. B. 394.

(a) *Keir v. Leeman*, 6 Q. B. 308; S. C. in error, 9 Q. B. 371. See also *Goodall v. Lowndes*, 6 Q. B. 464; *Coppock v. Bower*, 4 M. & W. 361; *R. v. Allen*, 1 Best & S. 850; 31 L. J., M. C. 129; and notes to *Collins v. Blantern*, 1 Smith's L. C. 186.

agreement not to prosecute further a pending indictment for riot and assault upon a constable in the execution of his duty was illegal. If, however, the offence involve damages to the injured party, for which he may maintain an action as in the case of an assault, although the offence is also of a public nature, the *damage* sustained by the individual may legally form the subject of a compromise. But if criminal proceedings have been commenced in respect of such injury, it is doubtful whether he can enter into any compromise upon the subject before conviction (*b*). Upon principle, such a course appears to be objectionable, inasmuch as it encourages persons to use the process of criminal justice as a means of oppression and extortion. With reference to this branch of the question, C. J. *Tindal*, delivering the judgment of the Court of Exchequer Chamber on the occasion above alluded to, said (*c*), “there is a class of cases, such as *Beeley v. Wingfield* (*d*), and *Baker v. Townsend* (*e*), which do not at all break in upon sound principles. These are cases where the private rights of the injured party are made the subject of agreement, and where, by the previous conviction of the defendant, the rights of the public are also preserved inviolate. As *Gibbs*, C. J., in the latter case, well observes, “the parties have referred nothing but what they have a right to refer. They have referred the several assaults” (by which we understand him to mean their several rights to damages for those assaults); “these may be referred. They have referred the right of possession; that may be referred. The reference of all matters in dispute *refers all other their civil rights*,” which words show our previous interpretation to be correct. The case of *Beeley v. Wingfield* was after conviction, and the promissory note seems merely to have been given for the expenses of the prosecution, and was obviously a part of

(*b*) See *Kyd on Awards*, p. 66,  
2nd ed.

(*c*) 9 Q. B. p. 394.

(*d*) 11 East, 46.

(*e*) 7 Taunt. 422.

the punishment inflicted by the Court after conviction of the offence. Indeed it is very remarkable what very little authority there is to be found, rather consisting of dicta than decisions, for the principle that any compromise of a misdemeanour, or indeed of any public offence, can be otherwise than illegal, and any promise founded on such a consideration otherwise than void. If the matter were *res integra*, we should have no doubt on this point. We have no doubt that, in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him, notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. It is said, indeed, that in the case of an assault, he may also undertake not to prosecute on behalf of the public. It may be so, but we are not disposed to extend this any further. In the case before us, the offence is an assault coupled with riot and the obstruction of a public officer. No case has said that it is lawful to compromise such an offence. Nor do we think that the assent of the judge was material."

Commissioners of excise are expressly authorized by 7 & 8 Geo. 4, c. 53, s. 98, to compromise offences against the excise (*f*).

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SECT. 8.—*Of the Limitation of Authority as to Amount.*

The jurisdiction of magistrates is often limited by the amount or the value of the property in dispute. Thus, under the Metropolitan Police Acts, a magistrate may order goods unlawfully detained to be restored to their owner, when the value does not exceed 15*l.* (*g*); and he may, in certain cases, award compensation for damage not exceeding 10*l.* (*h*); and under the Lands Clauses Consolidation Act, when the compensation claimed for and taken or injuriously affected does not exceed 50*l.*, it

(*f*) See *Atlee v. Backhouse*, 3 M. & W. 633.

(*g*) 2 & 3 Vict. c. 71, s. 40.

(*h*) 2 & 3 Vict. c. 47, s. 62.

is to be settled by two justices (*i*). Under the Merchant Shipping Acts (*j*) justices may adjudicate upon salvage claimed, provided that the property saved does not exceed 1,000*l.* in value (*k*).

SECT. 9.—*Of the Limitation of Authority as to Time.*

Having explained the extent of the magistrate's jurisdiction with a view to the place and nature of the offence, it remains to be inquired what limitations it is subject to in point of *time*. This is to be ascertained by the statutes themselves which direct the proceeding in each case, and where no time is specially limited, the complaint is to be made or the information laid within six calendar months from the time when the matter of the complaint or information arose (*l*). The period is fixed by different statutes, either with reference to the time of commencing the prosecution, or to the time of conviction: and the following rules apply according as these different terms are made use of. Where the proviso, as to the time, runs, "*that the offence be prosecuted,*" or that "*the party be prosecuted for the offence,*" within a stated time (*m*), it is sufficient that the information be laid, though the conviction do not take place within that time (*n*): the information being, for that purpose, the commencement of the prosecution. But if a statute authorizes a conviction, "*provided such conviction be made within* — months after the offence committed," (as the former game acts of the 22 & 23 Car. 2, c. 25; 5 Ann. c. 14, s. 1,) it is not enough that the in-

(*i*) 8 Vict. c. 18, s. 22.

(*j*) Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 49.

(*k*) See *The William and John*, 32 L. J., Adm. 102; and *The Andrew Wilson*, *Id.* 104.

(*l*) 11 & 12 Vict. c. 43, s. 11. But it need not be alleged in the conviction that the information was laid

within the specified time. *Wray v. Toke*, 12 Q. B. 492. This section is retrospective; *R. v. Leeds and Bradford Railway Company*, 18 Q. B. 343; 21 L. J., M. C. 193.

(*m*) As 3 Will. & M. c. 10; 29 Car. 2, c. 7, and various other statutes.

(*n*) *R. v. Barrett*, 1 Salk. 383.

formation was within that period, but the conviction itself is void if not made within the limited time. And it makes no difference, that it was prevented from being so by an adjournment at the request of the defendant himself; for, after the time has expired for making the conviction, there is no authority existing for that purpose (*n*); and where an act provides that all penalties imposed by it may be "recovered" within three months of the commission of the offence, it seems that the conviction must occur within the three months (*o*). Proceedings in bastardy are not within the statute 11 & 12 Vict. c. 43, but the application for a summons against the putative father must be made within twelve months from the birth of the child. An application for a bastardy summons having been made within the twelve months, but the summons, which was thereupon granted not having been served upon the defendant by reason of his absence, an application after the lapse of twelve months from the birth of the child was made for another summons to another justice, the justice who had granted the first summons being dead,) it was held to be too late, as the second summons could not be treated as having issued on the first application (*p*). Notice of appeal against an order in bastardy is required to be given within twenty-four hours "after the adjudication and making of the order." The time

(*n*) *R. v. Tolley*, 3 East, 467; *R. v. Mainwaring*, El. B. & El. 474; 7 L. J., M. C. 278; per Crompton, *Id.* 279.

(*o*) *R. v. Mainwaring*, *supra*. Mr. Justice Coleridge, however, in that case said, "the word 'recovered' is a complex term, and seems to allude to the many steps which must be taken; and I should be inclined to say, that if the informer or complainant took any one of the steps required, and thereby commenced the proceedings within the time limited, he would have performed the condition required;" and in the course of the argument Mr. Justice Erle asked, "May not

a judgment pronounced after an adjournment by reasonable intendment of law be taken to relate back to the time when the proceeding was commenced?" The word "recovered," used with reference to actions at law in general, involves recovery by judgment; see *Beard v. Perry*, 2 B. & S. 493; 31 L. J., Q. B. 180; *James v. Vane*, 29 *Id.* 169.

(*p*) *Reg. v. Pickford*, Ell. B. & S. 77; 30 L. J., M. C. 133; *contra* if the issuing of the summons was suspended until the second application. See *Potts v. Cambridge*, 8 El. & Bl. 847; 27 L. J., M. C. 62; and *R. v. Machen*, 18 L. J., M. C. 213.

runs from the verbal adjudication at petty sessions, and not from the time when the formal order is drawn up and signed by the justices (*q*).

Time how reckoned.

"Year."

"Month."

"From committing," or "from the day of committing the offence."

With regard to the mode of reckoning the time limited by penal statutes, these points have been determined:—

1st. If the time be expressed by *the year*, or an aliquot part, as a half, a quarter, &c. of a year, the computation is by calendar months, of twelve to the year; but formerly if *months* were mentioned, and not the *year*, they were computed by lunar months, of four weeks to the month (*r*). Now, however, by 13 & 14 Vict. c. 21, s. 4, the word "month" in all Acts of Parliament is to mean *calendar* month, unless words be added showing lunar month to be intended.

2nd. Whether the time is dated from the offence committed or from the day of doing the act in question, the day on which it was committed is to be excluded (*s*). In the computation of the month's notice of action to a justice required by statute, the day of giving the notice and the day of suing out the writ are both excluded (*t*).

The same mode of computation has always been

(*q*) *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193.

(*r*) *R. v. Peckham*, Carth. 406; *R. v. Bellamy*, 1 B. & C. 500; 2 D. & R. 727; 1 Dowl. & Ry. Mag. Ca. 376. One apparent contradiction to this rule was found in the construction of the act 13 Hen. 4, c. 7, for the punishment of riots, which requires the justices to inquire, hear, and determine within a *month* after the riot committed. Upon this statute it was determined, that an indictment may be within a calendar month; for, it was said, that statute is not a penal statute, but only directory of the punishment of an offence which was so at common law, and therefore that the common law calculation, viz. by calendar months, must prevail. *R. v. Cussens*, 1 Sid. 181. See *Lang v. Gale*, 1 M. & S. 111, as to the construction of the

word "month," when used in a contract; also *Simpson v. Margitson*, 11 Q. B. 23, 31; Chitty on Contracts by Russell, p. 630, 5th ed. See generally upon legal time, 3 Chitty's Stats. by Welsby and Beavan, p. 1374, tit. "Time," and the notes thereto. When provisions as to time are directory only, see *ante*, p. 35, n. (*h*).

(*s*) *Young v. Higgon*, 6 M. & W. 49, 52; overruling *Castle v. Burditt*, 3 T. R. 623, and distinguishing *R. v. Adderley*, 2 Doug. 463; see also *Freeman v. Read*, 4 B. & S. 174; 32 L. J., M. C. 226; *Lester v. Garland*, 15 Ves. 248; *Blunt v. Heslop*, 8 A. & E. 577; *Williams v. Burgess*, 12 Id. 635; *Hardy v. Ryle*, 9 B. & C. 608; *R. v. Green*, 10 Mod. 212.

(*t*) *Young v. Higgon*, *supra*. See 11 & 12 Vict. c. 44, s. 8.



adopted, where the statute uses the words "clear days" "Clear." or so many "days at least" (u). "At least."

3rd. If a penalty is to be paid "within" a certain "Within." number of days, the first is to be reckoned exclusively and the last inclusively (v).

4th. The words "immediate" and "forthwith" occur "Immediate." "Forthwith." in a statute are not construed in their strictest sense "on the instant," but mean with reasonable promptness, having regard to all the circumstances of the particular case (x).

5th. Where a statute prescribes a given number of days Sunday. for doing an act, and does not expressly exclude Sunday, the days mentioned are to be reckoned consecutively, including Sunday (y); and therefore when a notice of appeal was to be served "within six days," it was held too late to serve it on the seventh day, although the sixth day

(u) *Mitchell v. Forster*, 12 A. & E. 472; *R. v. JJ. Shropsh.*, 8 Id. 173; *Re Prangle*, 4 Id. 781; *Zouch v. Empsey*, 4 B. & Ald. 522; *R. v. JJ. Herefordsh.*, 3 Id. 581; *Freeman v. Read*, *supra*.

(v) *Newman v. The Earl of Hardwicke*, 3 N. & P. 368, where the Court also decided that if the warrant is not issued too soon, it is immaterial that it bears too early a date. See also on the words "within," *Williams v. Burgess*, 12 A. & E. 335; *R. v. JJ. Middlesex*, 2 Dowl. N. S. 719; as to the word "after," see *R. v. Higham*, 9 Dowl. 203.

(x) *R. v. Aston*, 1 L. M. & P. 491; 14 Jur. 1045; 19 L. J., N. S., M. C. 236, 239; *S. C.*, *R. v. JJ. Huntingdonsh.*, 9 D. & R. 588; *Kennedy v. Hutchinson*, 6 M. & W. 134; *Page v. Pearce*, 9 Dowl. 815; *R. v. J. Worcester*, 7 Id. 789; *R. v. Robinson*, 12 A. & E. 672; *Ex parte Lowe*, 15 L. J., N. S., M. C. 99; *Sandford v. Alcock*, 2 Dowl. N. S. 63; *Drake v. Gough*, 1 Id. 573; *Tennant v. Bell*, 9 Q. B. 684; *Staunton v. Wood*, 16 Id. 638; *Doe v. Button*, 9 C. & P. 706; *Duncan v.*

*Topham*, 8 C. B. 225; *R. v. JJ. Ely*, 5 Ell. & B. 489; 25 L. J., M. C. 1, 3; *Ex parte Lowe*, 3 D. & L. 737; 15 L. J., M. C. 99; *R. v. JJ. Gloucestersh.*, 16 L. J., M. C. 57. Certificate under Jury Act, *Christie v. Richardson*, 10 M. & W. 688; *Geeves v. Gorton*, 15 Id. 186. Certificate under 3 & 4 Vict. c. 24, *Thompson v. Gibson*, 8 M. & W. 281; *Pryme v. Brown*, 1 Dowl. N. S. 680; *Nelmes v. Hedges*, 2 Id. 350. Certificate under the County Court Acts, *Chaplin v. Levy*, 9 Exch. 673. Certificate of dismissal of complaint for an assault under 9 Geo. 4, c. 31, s. 27; *Hancock v. Somes*, El. & El. 795; 28 L. J., M. C. 196; *Costar v. Hetherington*, El. & El. 802; 28 L. J., M. C. 198. See where "immediately" means "on the spot," *Arnold v. Dimsdale*, 5 El. & Bl. 580. Where a contract is to be performed "di-

(y) Per Hill, J., in *Ex parte Simkin*, 29 L. J., M. C. 25.

"Directly."

fell on a Sunday (z). Sunday also is counted in the two days for entering into recognizances on appeal under the Nuisances Removal Act, 18 & 19 Vict. c. 121, s. 40 (a); but the twenty-four hours prescribed by the stat. 7 & 8 Vict. c. 101, s. 4, for giving notice of appeal against an order of affiliation are reckoned exclusively of Sunday (b).

“Judgment.”

6th. Under an act, which allowed the party “aggrieved by the *judgment*” of a justice to appeal to the next quarter sessions, it was contended that the party was not aggrieved by the judgment until execution, but the Court held that he must appeal to the sessions next after the conviction, and not to those after the execution upon it (c). In that case, *Buller, J.*, said:—“The grievance to the party is the *judgment*, and not the execution. A writ of error will lie before execution, and an appeal is in the nature of a writ of error. It complains of the judgment. If a contrary construction were to be put upon this statute, it would be such a snare to the magistrates, that they would never be safe, for the justices do not issue their warrants of execution till they know whether an appeal will be brought or not; and they could never know when the party found himself aggrieved, if he were not to appeal at the quarter sessions next after the conviction.” But where a statute required the notice of appeal to be given within six days after the “cause of complaint” arose, it was held to mean six days after the actual levy under the warrant of distress and not merely after the date of the

“Cause of complaint.”

(z) *R. v. JJ. Middlesex*, 2 Dowl., N. S. 719; *Rawlins v. Overseers of West Derby*, 2 C. B. 72; see *Anon.*, 18 Jur. 1104; *Rowberry v. Morgan*, 9 Exch. 730; *Peacock v. The Queen*, 4 C. B., N. S. 264; 27 L. J., C. P. 224.

(a) *Ex parte Simkin*, 29 L. J., M. C. 23.

(b) See Woolrych on Legal Time, p. 92; 3 Burn, J., “Lord’s Day.” As to fractions of a day in law, *Hardy*

*v. Ryle*, 9 B. & C. 606; *Edwards v. The Queen*, 9 Exch. 628; *R. v. JJ. Middlesex*, 5 D. & L. 580; *R. v. Warwick*, 22 L. J., N. S., M. C. 109.

(c) *Prosser v. Hyde*, 1 T. R. 414, 417; distinguishing *R. v. Norton*, 2 Stra. 831, where, under similar words relative to orders of removal, it had been held that the party had the sessions after the actual removal. See *R. v. Recorder of Shrewsbury*, 1 El. & Bl. 711, 718.

warrant (*d*), Lord *Ellenborough* saying:—"The party appealing was within six days after he was actually damaged. It is not necessary he should appeal on the warrant, for *non liquet* that it will be proceeded upon." A statute required that an action for anything done in pursuance of it should be brought within three months after "*the fact committed*." An action of trespass for taking, distraining and selling the plaintiff's goods under a warrant of distress for arrears of a church-rate in pursuance of the act, was held rightly brought within three months after the *sale* (*e*). The Court distinguished this case, in which the seizure of the goods was made with a view to their detention until the amount should be paid, and their subsequent sale, if it should not, from those cases in which the seizure is for a forfeiture and intended to deprive the party of his property immediately. In the latter class of cases the time runs from the seizure (*f*).

"Fact committed."

The statute 24 Geo. 2, c. 44, s. 8, required that any action against a justice for anything done in the execution of his office should be commenced within six calendar months after the "*act committed*" (*g*). An action for false imprisonment was held to have been commenced in time, the plaintiff having been discharged from prison on the 14th of December, and the writ having been issued on the 14th of June (*h*).

"Act committed."

The meaning of the words in 11 & 12 Vict. c. 43, limiting the period of prosecution to six months from the

Matter of the complaint.

(*d*) *R. v. JJ. Devon*, 1 M. & S. 411.

(*e*) *Collins v. Rose*, 5 M. & W. 194; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121, 127.

(*f*) See the authorities cited in *Collins v. Rose*. And if goods are found, subjecting the party having them in his possession to the forfeiture of them for receiving them illegally, the day on which they are found will be presumed to be the day whereon the forfeiture was incurred; *R. v. Bass*, 5 T. R. 251.

(*g*) The words in sect. 8 of 11 & 12 Vict. c. 44, are "after the act complained of had been committed."

(*h*) *Hardy v. Ryle*, 9 B. & C. 603; *Young v. Higgon*, 6 M. & W. 53. When the cause of action is a continuing one, by imprisonment, it is sufficient to show that the action was commenced within six months of the end of the imprisonment. *Massey v. Johnson*, 12 East, 67; *Pickersgill v. Palmer*, B. N. P. 24; *Collins v. Rose*, *supra*; see *Whitehouse v. Fellowes*, 10 C. B., N. S. 765.

time "when the matter of the complaint, &c. arose," is that proceedings shall be taken within six months from the time when the liability or default of the defendant was complete, and the remedy given by the statute was capable of being enforced against him. Thus, under the Metropolitan Building Act, 1855, expenses incurred by the commissioners in respect of dangerous structures are payable by the owner. Payment of expenses so incurred having been demanded of the owner and refused, complaint was made before a magistrate within six months from the refusal to pay, but after six months from the completion of the work which caused the expenditure. It was held that "the matter of complaint" was non-payment of the expenses, and therefore the time ran from the demand and refusal of payment, not from the completion of the work (*i*). Under "the Local Government Act, 1858" (21 & 22 Vict. c. 98, s. 63) the Local Board of Health having incurred expenses, for repayment of which the owner of a house is liable, and such expenses having been settled and apportioned by the surveyor (*k*), the apportionment is to be binding, unless, within three months from notice of the apportionment, the owner shall by written notice dispute the same. The six months under the 11 & 12 Vict. c. 43, do not begin to run until the expiration of the three months during which the apportionment can be disputed (*l*). An information for deserting a wife, whereby she became chargeable to the parish, was held to be in time if laid within six calendar months from the time of chargeability (*m*).

(*i*) *Labalmondiere v. Addison*, 1 El. & El. 41; 28 L. J., M. C. 25; and see *R. v. Middleton*, 1 El. & El. 98; 28 L. J., M. C. 41.

(*k*) That is, as to the proportion to be borne, not as to the reasonableness of the expenses. See *Bayley v.*

*Wilkinson*, 16 C. B., N. S. 189; 33 L. J., M. C. 161.

(*l*) *Jacomb v. Dodgson*, 3 B. & S. 461; 32 L. J., M. C. 113.

(*m*) *Reeves v. Yeates*, 1 H. & C. 435; 31 L. J., M. C. 241; *dis.* Bramwell, B.

SECT. 10.—*Of the Delegation of Authority.*

It has been much questioned whether the Crown, since the stat. 27 Hen. 8, c. 24, s. 2, can delegate to a subject the power of appointing a justice of the peace (*n*). Where by charter the aldermen of a borough had power and authority to execute by themselves, or, in their absence, by their deputies, the office of aldermen, and the charter then directed that the aldermen for the time being should be justices of the peace within the borough: it was held that this charter did not enable the aldermen to delegate their office of justice, and therefore that a deputy alderman was not a justice for the borough (*o*). And it may be laid down as a general rule that a ministerial officer may, but a judicial officer cannot, appoint a deputy (*p*).

(*n*) *Jones v. Williams*, 3 B. & C. 762; 5 Dowl. & Ry. 654; *Arnold v. Gaussen*, 8 Exch. 463, 475; *Arnold v. Dimsdale*, 2 El. & Bl. 580.

(*o*) *Jones v. Williams*, *supra*.

(*p*) *Walsh v. Southworth and others*, 6 Exch. 150. 156; per Parke, B., 1 Roll. Ab. 591, tit. "Deputie;" see also Com. Dig. "Officer" D. 2; 4 Inst. 126, 128; *Claridge v. Evelyn*, 5 B. & Ald. 87, per Holroyd, J.; *Jones v. Williams*, 2 Dowl. N. S. 938. Recorder appointing deputy, 5 & 6 Will. 4, c. 76, s. 103; stipen-

diary magistrate, 21 & 22 Vict. c. 73, s. 13; County Court Judge, 9 & 10 Vict. c. 95, s. 20. Where a judge is interested, neither he nor *his deputy* can determine the cause or sit in Court; *Brooks v. The Earl of Rivers*, Hardr. 503; and see *Worsley v. The South Railway Company*, 16 Q. B. 539; *ante*, p. 39. As to sessions delegating to clerks of the peace the ascertaining of the amount of costs to be paid, see Index, tit. Costs.

## CHAPTER II.

OF THE PROCEEDINGS BEFORE THE JUSTICES PRELIMINARY  
TO CONVICTION OR DISMISSAL, AND PROCEDURE  
ON DISMISSAL.

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SECT. 1.—*On the General Effect of the Statute 11 & 12 Vict. c. 43.*

General effect  
of 11 & 12  
Vict. c. 43.

IN the present chapter, we shall take a view of the proceedings before justices preliminary to judgment and conviction, but before doing so, we propose to consider generally the applicability and effect of the statute 11 & 12 Vict. c. 43 (*a*), which materially influences such proceedings at every stage, and indeed may be said to pervade the law relating to the subject.

This statute forms one of a series known as *Jervis's Acts* (*b*), from their having been framed and introduced into parliament by Sir John Jervis, formerly Chief Justice of the Court of Common Pleas, who then filled the office of Attorney-General; it is entitled “An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Sum-

(*a*) The whole of this statute will be found in the Appendix.

(*b*) 11 & 12 Vict. cc. 42, 43, 44.

mary Convictions and Orders," and recites, that it would conduce to the improvement of the administration of justice if the several statutes thereon were consolidated, with such additions and alterations as might be deemed necessary, and that such duties should be clearly defined by positive enactment. In accordance with these objects, its provisions simplify and render uniform the procedure before justices relating to summary convictions and orders, prevent technical objections from being taken to them, and determine with certainty many questions of doubt and difficulty which existed at the time of the passing of the statute.

General forms are also given, applicable to almost every case that can arise (*c*), and numerous statutes, and parts of statutes, are repealed. The sections are, in some instances, general in their terms, referring to "all cases where an information shall be laid" (*d*); but, as we have seen, these words still seem to render the proceedings liable to the express requirements of the statutes on which they are founded (*e*): other sections in terms leave the proceedings subject to such special statutes, *e. g.* informations may be laid without oath "unless some particular act of parliament shall otherwise require" (*f*); while to others a retrospective effect is expressly given; thus the 17th section, regulating the forms of convictions, enacts, that "where no particular form of conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon *statutes hitherto passed*, whether any particular form of conviction have been therein given or not," it shall be lawful for the justice to draw up his conviction according to the forms in the schedule (*g*).

(*c*) See *R. v. Hyde*, 16 Jur. 337; 21 L. J., M. C. 94, S. C.

(*d*) Sect. 1, &c.

(*e*) *Ante*, p. 34, n. (*a*).

(*f*) Sect. 10, and see sects. 11, 12, 19, 21.

(*g*) In *R. v. The Leeds and Brad-*

*ford Railway Company*, 18 Q. B. 343; 21 L. J., M. C. 193, a retrospective effect was given to sect. 11, regulating the time for laying an information. See *Re Edmundson*, 17 Q. B. 67.

Places and statutes exempt from the act.

The act extends to England and Wales and the town of Berwick-upon-Tweed, but not to Scotland or Ireland, or to the Isle of Man, Jersey, Guernsey, Alderney or Sark, except the several provisions respecting the indorsement of warrants (*h*); neither is it to alter or affect the provisions of the London Police, or Metropolitan Police Acts; but the forms given by it may be varied, so as to render them applicable to the Metropolitan Police Courts, and also to the courts of stipendiary magistrates (*i*).

Matters exempt from the act.

The act also does not extend to—

Removal of the poor.

1. Warrants and orders for the *removal* of poor persons chargeable to any parish, township or place (*k*).

Lunatics.

2. Complaints and orders made with respect to *lunatics*, or the expenses incurred for the lodging, maintenance, medicine, clothing or care of any lunatic or insane person.

Excise, customs, stamps, taxes and post-office.

3. Informations, complaints or other proceedings under any statutes relating to the *excise, customs, stamps, taxes* or *post-office* (*l*).

Bastardy.

4. Complaints, orders and warrants in matters of *bastardy* made against the putative father, except such of the provisions as relate to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for nonpayment of the same.

Labour of factory children.

5. Proceedings under the acts of parliament regulating or otherwise relating to the labour of *children* and young persons in mills or *factories* (*m*).

(*h*) Sect. 37; *ante*, p. 24, *et seq.*

(*i*) Sect. 33.

(*k*) Sect. 35. This exemption, however, does not include an order for costs of maintenance consequent on an order of removal, and therefore a complaint of the nonpayment of such costs must be made within six months. *Hill v. Thorncroft*, 30 L. J., M. C. 52.

(*l*) This exemption does not apply if the information proceeds on a section not relating to the revenue

of excise, although there are other sections in the same statute relating to it. A conviction, therefore, under 4 & 5 Will. 4, c. 85, s. 8, for signing a false certificate in order to obtain a licence for the sale of beer drawn up according to the form in the schedule to 11 & 12 Vict. c. 43, is valid. *R. v. Bakewell*, 7 El. & Bl. 848; 26 L. J., M. C. 150.

(*m*) Sect. 35. With reference to these exceptions, it has been observed by Mr. Archbold, in his



There is a class of cases in which a special and extraordinary duty is cast upon justices, which are not within the act, such, for instance, as in the case of forcible entry, the proceedings upon view where a tenant deserts premises leaving no distress to countervail the arrears of rent, the recovery of premises by the landlord upon the determination of the tenancy, the view and proceedings where a highway is to be stopped up or diverted and the binding over of persons to keep the peace or be of good behaviour<sup>(n)</sup>. The enforcing payment of poor and highway rates is not within the operation of the act, but general forms for this purpose were given in an act passed in the next session, 12 & 13 Vict. c. 14. It was doubted whether the 11th section of 11 & 12 Vict. c. 43, limiting

second edition of Jervis's Acts, p. 187, n., that orders of removal and lunatics orders are not within the scope of the act, because they are made *ex parte*, and their truth or validity cannot be tried out of sessions; convictions for offences relating to the excise, customs, stamps, taxes and post-office are excluded, because the officers in these departments were accustomed to and had a confidence in their respective modes of proceeding, which they were unwilling to exchange for any other. "Bastardy orders," he adds, "are also excluded; and any person who knows and understands the laws upon that subject, and the nature of the forms belonging to it, which are made valid by act of parliament, will readily conceive how much better it is to adhere to the law as it is, and its forms, than to introduce a new system of practice upon the subject. As to convictions under the Factory Acts, the whole law in this respect is now usually administered by the factory inspectors, who have a concurrent jurisdiction, in such matters, with the justices of the peace. And these factory inspectors were so used to their own mode of proceeding, and as they conceived) had got it into such admirable working order, that

they begged that their proceedings might be excluded from the operation of this act, and it was conceded to them." It should also be remarked that the statutes relating to the matters thus excepted provide forms, which, for the most part, are as general as those given by the act in question; see 8 & 9 Vict. cc. 85—94, for consolidating the excise and customs; 12 & 13 Vict. cc. 1 & 90, amalgamating the departments of excise, stamps and customs, under the general name of the board of commissioners of inland revenue; 15 & 16 Vict. c. 61 (excise); 16 & 17 Vict. c. 107, and schedule, and 17 & 18 Vict. c. 122 (customs); 9 & 10 Vict. c. 56, and schedule (taxes); 7 Will. 4 & 1 Vict. c. 36, and schedule, and 3 & 4 Vict. c. 96 (post-office); 8 & 9 Vict. c. 29, and schedule, and 16 & 17 Vict. c. 104 (factory children); 16 & 17 Vict. c. 97 (Pauper Lunatics' Consolidation Act), by sect. 127, the penalties are to be recovered in the manner provided by 11 & 12 Vict. c. 43; 7 & 8 Vict. c. 101, and 8 & 9 Vict. c. 10, and schedule (bastardy); 9 & 10 Vict. c. 66, and 10 & 11 Vict. c. 33, and schedule (removal of paupers).

(n) Archbold's 2nd edit. of the act, pp. 138, 139.

the period for making a complaint, &c. to six calendar months after the matter of complaint arose, extended to proceedings by auditors of Poor Law districts to recover sums certified by them to be due in the accounts of officers and others; and to remove such doubts, it was enacted by 12 & 13 Vict. c. 103, s. 9, that this limitation clause should not apply to such proceedings, but that they should be commenced within nine calendar months (*o*). The following cases are within the statute, so far as it is capable of application to them: proceedings under the Master and Servants Act, 4 Geo. 4, c. 34, although a warrant may be issued under sect. 3 without a previous conviction or order (*p*); proceedings under the stat. 20 Geo. 2, c. 19, s. 3, relating to the discharge of apprentices, although the order is not to be enforced by warrant, orders for the payment of church-rates (*g*), and under the Local Government Act, 1848, (amending the Public Health Act, 1848) (*r*). So, an adjudication by two justices under the Lands Clauses Consolidation Act, 1845, and the Railway Clauses Consolidation Act, 1845, of the sum (below 50*l.*) to be paid by a railway company as compensation to a party whose lands have been injuriously affected by the exercise of their statutory powers is an order within 11 & 12 Vict. c. 43, s. 1, and is bad under sect. 11 if the complaint, on which the order is founded, be made more than six calendar months after the cause of complaint arose (*s*).

The following pages of this work will be found to present, substantially and prominently, the *general* law relating to summary convictions, and, incidentally, to orders made by justices, at the same time sufficient of the former law

(*o*) See *R. v. Tyrwhitt*, 15 Q. B. 249.

(*p*) *R. v. Geswood*, 2 El. & Bl. 952; *Ex parte Allison*, 10 Exch. 561. See index, Master and Servant.

(*q*) Archbold, *ubi supra*, pp. 137, 138.

(*r*) *Jacomb v. Dodgson*, 3 B. & S.

461; 32 L. J., M. C. 113.

(*s*) *Re Edmundson*, 17 Q. B. 67, and *R. v. Leeds and Bradford Railway Company*, 18 *Id.* 343; 21 L. J., M. C. 193. An order, therefore, against a corporation is within the act.

will be retained to enable practitioners to apply it to the *exceptional* cases lately mentioned (*t*). Where, however, the provisions of the new act, or general propositions resulting therefrom, are stated, they must be taken subject to the preceding remarks, and therefore as inapplicable to the excepted cases. It would lead to almost endless repetition, and to some confusion, if the comparatively few instances excluded from the statute were to be expressly noticed throughout the work whenever they do not come within the general scope of its observations.

The act in question is of very great importance considered as the governing act upon the subject of summary convictions and orders, for its provisions have been generally incorporated in subsequent penal statutes (*u*); it is, however, to be regretted that several of such statutes, although passed in the same and the next session (*x*), instead of referring to this act for the mode of procedure, re-enacted its provisions, or were filled with clauses and forms inconsistent with it.

(*t*) Further remarks on these cases will also be found in the Appendix.

(*u*) 12 & 13 Vict. c. 12, s. 86 (mutiny); 14 & 15 Vict. c. 79, s. 34 (steam navigation); 16 & 17 Vict. c. 97, s. 127 (lunatic); 16 & 17 Vict. c. 128, s. 8 (smoke nuisance).

(*x*) See 11 & 12 Vict. c. 63 (public health); 11 & 12 Vict. c. 23 (nuisances); 11 & 12 Vict. c. 97 (for prevention of contagious diseases among animals); 12 & 13 Vict. c. 92 (cruelty to animals). By the Criminal Law Consolidation

Acts (24 & 25 Vict. c. 96, s. 120, and c. 97, s. 76) every offence thereby made punishable on summary conviction may be prosecuted as directed by 11 & 12 Vict. c. 43 (so far as no provision is made by the former Acts for any matter or thing which may be required to be done in the course of such prosecutions), and all the provisions, 11 & 12 Vict. c. 43 are made applicable to such prosecutions as if they were incorporated in the said acts.

SECT. 2.—*Information or Complaint.*

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<i>Feme covert</i> .....	<i>id.</i>	17. <i>Detaining Party charged on</i>	77
<i>Infant</i> .....	<i>id.</i>	18. <i>Justice bound to proceed upon</i>	<i>id.</i>
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Information,  
when neces-  
sary.

First. It is requisite in all summary proceedings of a penal nature that there should be an information or complaint, which is the basis of all the subsequent proceedings, and without which the justice is not authorized in intermeddling (*y*), except where he is empowered by statute to convict on view, as by 8 Hen. 6, c. 9, for forcible detainers; 19 Geo. 2, c. 21, s. 2, against profane swearing; 5 Geo. 4, c. 83, s. 3, for certain offences by vagrants; 3 Geo. 4, c. 126, s. 132, the General Turnpike Act; 5 & 6 Will. 4, c. 50, s. 78, for certain offences against the Highway

(*y*) 1 Smith's Leading Cases, 387*b*, n.; 1 Wms. Saund. 262, n. (1); *R. v. Justices of Buckinghamshire*, 3 Q. B. 800, 807; *R. v. Bolton*, 1 *Id.* 66; *R. v. Fuller*, 1 Ld. Raym. 509; per Parke, B., in *R. v. Millard*, 17 Jur. 400; 22 L. J., M. C. 108, S. C.; *Brookshaw v. Hopkins*, Lofft. 240; *R. v. Hareby*, Andr. 361; *R. v. Birnie*, 1 Moo. & R. 160, 5 C. & P. 206; *Stevens v. Clark*, 1 Car. & M. 509. The same principle applies to other limited jurisdictions created by statute; thus, a presentment is the foundation of the jurisdiction of the commissioners of sewers, and if there be not one, their rate is void; *Wingate v. Wait*, 6 M. & W. 745. See also *Doe v. The Bristol and Exeter Railway Company*, *Id.* 320; *R. v. Croke*, Cowp. 26; *Christie v. Unwin*, 11 A. & E. 373; *R. v. Hartley*

*Wintney Union*, 1 Q. B. 677. As to presentment by justices, see 5 & 6 Will. 4, c. 50, s. 1, and *R. v. Inhabitants of Mawgan*, 8 A. & E. 496; also sect. 85 and *Wright v. Overseers of Frant*, 4 B. & S. 118; 32 L. J., M. C. 204. Where prisoners were apprehended and charged before a magistrate with felony (under sect. 10 of 24 & 25 Vict. c. 97), but being remanded, they were afterwards charged with a misdemeanor only (under sect. 52 of the same statute) without any fresh information being laid, and no objection was taken on this ground until after the case had been heard on its merits, it was held that the justices had jurisdiction to convict of the latter offence. *Turner v. The Postmaster-General*, 34 L. J., M. C. 10.

Act (z), and by 26 & 27 Vict. c. 93, s. 3, in the case of reservoirs constructed under the Waterworks' Clauses Act being in a dangerous state.

The proceeding which forms the groundwork of a conviction is termed "laying" or "exhibiting an information," while the similar proceeding for the obtaining of an order of justices is termed "making a complaint" (a). This distinction is preserved throughout the stat. 11 & 12 Vict. c. 43, and will be followed in the present work.

Distinction between information and complaint.

A sufficient information by competent persons, relating to a matter within the magistrate's cognizance, gives him jurisdiction, irrespective of the truth of the facts contained in it. His authority to act does not depend upon the veracity or falsehood of the statements, or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation, and he will be protected although the information may disclose no legal evidence or purport to be founded upon inadmissible evidence or upon mixed allegations of law and fact (b).

Effect of information in giving jurisdiction.

As on the one hand the information is not invalidated by reason of the statements being false, so, on the other, it cannot be rendered valid by the testimony offered in support of it, for the office of the evidence is to prove, not to supply, a legal charge (c).

The adjudication of the justices is confined within the limits of the information or complaint (d). Thus, where, on an application for sureties to keep the peace, an assault as well as a threat was proved, and the justices not only ordered the defendant to find sureties, but also, not-

Limits the adjudication.

(z) As to convictions on view, see *Jones v. Owen*, 2 D. & R. 600; *R. v. Jones*, 12 A. & E. 684; *Nixon v. Nanney*, 1 Q. B. 747.

(a) The distinction between orders and convictions is pointed out in the chapter on Convictions.

(b) *Cave v. Mountain*, 1 M. & G. 57, 264, n.; *R. v. Rotherham*, 3 Q. B. 776; *R. v. Bolton*, 1 Id. 66, 75; *Hills v. Collett*, 6 Bing. 85; *R. v. Bidwell*, 1 Den. C. C. 222; 17 L. J.,

M. C. 99. In *Sir Edward Clere's case*, Cro. Eliz. 130, the court said, "If a man be accused to a justice of peace of an offence for which he causeth him to be arrested by his warrant, although the accusation be false, yet he is excusable."

(c) *R. v. Wheatman*, Doug. 435; *Wiles v. Cooper*, 3 A. & E. 524, 531.

(d) As to variance between the evidence and information, see *post*, p. 76.

withstanding the protest of the complainant, convicted the defendant of the assault, a *certiorari* was granted for the purpose of quashing the conviction. Mr. Justice *Erle* said:—"It is clear that the party assaulted has a choice of several remedies, civil as well as criminal. He may proceed by action or by indictment, or he may apply for a summary conviction under the statute (9 Geo. 4, c. 31, s. 27), and if he applies for the latter, he is barred from any further proceedings. I am of opinion that the justices had no jurisdiction to convict summarily of an assault, when, as in the present case, it is clear that the complainant did not call upon them to exercise that jurisdiction. I agree that when it is left in doubt whether or not the complainant wished for an adjudication, every intendment must be made in favour of the justices" (*e*).

On an information (under the 5 Geo. 4, c. 83, s. 4) for being found at night in a dwellinghouse for the purpose of feloniously stealing certain provisions, the justices found that the defendants were in the house of A. B., with his servants, for the purpose of joining in the taking and consuming of provisions which were his property, and without his knowledge or consent; the conviction was quashed, on the ground that it did not find that which was charged in the information (*f*); and where a defendant was summoned on a charge of being drunk and guilty of riotous behaviour, under 10 & 11 Vict. c. 89, s. 29, and the magistrates convicted him of drunkenness, under 21 Jac. 1, c. 7, the conviction was held to be bad (*g*). So, on a summons under the Metropolitan Police Act, to answer for an assault upon a constable in the execution of his duty, the

(*e*) *R. v. Denny and others*, 2 L. M. & P. 230; 15 Jur. 227; 20 L. J., M. C. 189, S. C.; and see *R. v. Soper*, 3 B. & C. 857.

(*f*) *Kirkin and others v. Jenkins*, 32 L. J., M. C. 140. Affidavits are admissible for the purpose of showing what evidence was given; *Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J., M. C. 152, overruling

the opinions of two judges in *Re Thompson*, 30 L. J., M. C. 19. See also *Turner v. Postmaster-General*, 34 Id. 10, ante, p. 64, n. (*y*); and *Gelan v. Hall*, 2 H. & N. 379; 27 L. J., M. C. 78.

(*g*) *Martin v. Pridgeon*, 1 E. & E. 778; 28 L. J., M. C. 179; and see *Loden v. Cray*, 7 L. T., N. S. 324.

defendant cannot be convicted of a common assault under 24 & 25 Vict. c. 100, s. 42 (*h*), the effect of the charge as well as the statute being different (*i*). But, on an information charging an assault, the justices may convict of that offence, although evidence is given which, if true, would show that a rape had been committed on the informant (*k*).

When the information must be received.

As it is the duty of justices to enforce those acts, the execution of which is referred to them, they cannot properly refuse to receive an information regularly brought before them, and upon such refusal the Court of Queen's Bench will issue a mandamus or grant a rule (*l*) to compel them to receive it (*m*). Formerly, if justices were compelled by mandamus to do an act, and it turned out after all that the act was one which they could not do legally, they were liable to an action; and, therefore, where they had reasonable ground for doubting their jurisdiction, the Court would not compel them to act (*n*); but no responsibility is now incurred by them for anything done in obedience to a peremptory writ of mandamus (*o*) or a rule in the nature of a mandamus (*p*). Alluding to this alteration in the law, Mr. Justice *Coleridge* observed in a recent case:—"In consequence of the stat. 11 & 12 Vict. c. 44, by which justices are protected when they act in obedience to the process of this Court, the burden is shifted; we may issue our process to the justices, even where the law is not quite clear, and the person to be affected by the act commanded may try the question by resisting the order of justices" (*q*). The acts

(*h*) *R. v. Brickhall*, 33 L. J., M. C. 156.

(*i*) *Per Crompton, J.*, in *Turner v. Postmaster-General*, 34 L. J., M. C. 10—12.

(*k*) *Wilkinson v. Dutton*, *supra*. As to variance between the information and the evidence, see *post*, p. 76.

(*l*) Under 11 & 12 Vict. c. 44, s. 5.

(*m*) *R. v. Newton*, 1 Stra. 413; *R. v. Tod*, *Id.* 530; *R. v. Benn*, 6 T. R. 198. See also 4 Hen. 7, c. 12. The subject of declining jurisdiction is discussed, *post*, p. 78.

(*n*) *R. v. JJ. Buckinghamsh.*, 2 D. & R. 689; 1 D. & R. M. C. 369; 1 B. & C. 485, S. C.; *Ex parte Fulder*, 8 Dowl. 535; *R. v. Godolphin*, 8 A. & E. 338.

(*o*) 6 & 7 Vict. c. 67, s. 3.

(*p*) 11 & 12 Vict. c. 44, s. 5.

(*q*) *R. v. Cotton*, 15 Q. B. 574. In *R. v. Brown*, 13 Q. B. 654, the court held the question to be too doubtful to be decided upon a rule, and left the applicants to move for a mandamus or to try the question by appeal.

conferring authority upon justices vary in the terms used for that purpose: by some they are "authorized and empowered;" by others "authorized, empowered and *required*," or "enjoined" (*r*). Some statutes inflict a penalty upon the refusal to receive an information, for which an action may be brought (*s*).

When it  
should be laid.

The information, as we have seen, must be laid, or complaint made, within the time limited by the particular statute on which it is founded; if no period is fixed by the statute, it must be within six calendar months from the time when the matter of the information or complaint arose (*t*). Care must be taken that it is not laid prematurely, as by some statutes an interval must elapse before any prosecution (*u*).

Before whom.

The information must be laid before a magistrate having jurisdiction over the subject of the charge (*x*). One justice is competent to receive it, except, as it seems, when the statute on which the information is founded expressly requires it to be laid before two justices (*y*).

By whom.

It may be laid by the informant in person or by his counsel or attorney, or other person authorized in that behalf (*z*). By 15 & 16 Vict. c. 61, s. 3, any officer of inland revenue or any person authorized by the commissioners of inland revenue, or the solicitor of inland revenue in that behalf, may prosecute, conduct or defend any complaint, in-

(*r*) 19 Geo. 2, c. 22; 27 Geo. 2, c. 8, s. 5; 32 Geo. 2, c. 16, s. 18; 14 Geo. 3, c. 44; 49 Geo. 3, c. 65, relating to the customs; 50 Geo. 3, c. 41, s. 21, the Hawkers and Pedlers Act, and many others.

(*s*) *Smith v. Langham*, 2 Sh. 234, was an action for a penalty of 100*l.* against a justice for having refused to administer an oath to an informer, under 22 Car. 2, c. 1, s. 11; and see *Skin*. 61. Such penalties are more common in older acts, but are also found in various modern statutes, as 12 Geo. 2, c. 29, s. 9; 28 Geo. 3, c. 17, s. 4, &c.

(*t*) *Ante*, p. 50. 11 & 12 Vict. c. 43, s. 11; 12 & 13 Vict. c. 103,

s. 8. See *Re Edmundson*, 17 Q. B. 67, *S. C.*, *R. v. Leeds and Bradford Company*, 18 *Id.* 343; 21 L. J., M. C. 193; *Dowell v. Benningfield*, Car. & Marsh. 9; see the Metropolitan Police Act, 2 & 3 Vict. c. 71, ss. 38, 44; *R. v. Tyrwhitt*, 15 Q. B. 249.

(*u*) As by 19 Geo. 3, c. 50, s. 2, relating to frauds by distillers.

(*x*) *Ante*, p. 17 *et seq.* See *ante*, p. 34, as to the conviction being by a different magistrate from the one who receives the information.

(*y*) 11 & 12 Vict. c. 43, s. 29; *R. v. Griffin*, 9 Q. B. 155.

(*z*) 11 & 12 Vict. c. 43, s. 10.



formation or other proceeding to be heard before any justice or justices of the peace in any part of the United Kingdom relating to any duty or matter under the care or management of the said commissioners, whether such person be an attorney, solicitor, advocate or writer to the signet in any Court of Law or Equity or not, anything in any act to the contrary thereof notwithstanding. Generally any person may be informer (*a*), but sometimes the statute giving the penalty allows only particular persons to inform (*b*). In some cases of injury to private property, where the penalty is intended as a compensation to the owner, and in which the dissent of the owner is essential to constitute the offence, (as on the former stat. of 5 Geo. 3, c. 14, for the protection of private fisheries,) it is requisite that either the information should be laid on behalf of the owner, or some other proof of his dissent adduced along with the charge, although the statute itself may not profess in terms to make that a condition, for, unless it appears that the owner dissented from the act, it does not amount to an offence. It is now therefore settled, that, in every conviction of this nature, the proceeding before the magistrate must be at the instance of the owner (*c*). Such a conviction therefore cannot be founded upon the information of a common informer (*d*).

The complaint for a fraudulent removal of goods is required by 11 Geo. 2, c. 19, s. 4, to be made in writing by the landlord, his bailiff, servant or agent, and where it did not appear on the face of the adjudication or commitment that it had been so made, the party committed under it was discharged (*e*).

In some cases, however, the information need not be at the

(*a*) Esp. Penal Statutes, 11.

(*b*) See *R. v. Hicks*, 4 El. & Bl. 633; 24 L. J., M. C. 94, where it was held, upon the construction of the Torquay Market Act (15 & 16 Vict. c. cxxxviii, s. 31), that an information for penalties incurred under it could be laid only by the market company.

(*c*) *R. v. Daman*, 2 B. & A. 378;

1 Chit. 147, *S. C.*; *R. v. Harpur*, 1 D. & R. 222; 1 D. & R., M. C. 67. And see *R. v. Corden*, 4 Burr. 2279; Bosc. 17; *R. v. Edwards*, 1 East, 278, 281.

(*d*) And see 1 East, 281, in arg.

(*e*) *R. v. Fuller*, 2 D. & L. 98; *Coster v. Wilson*, 3 M. & W. 411; *R. v. Davis*, 5 B. & Ad. 551.

instance of the aggrieved party, even although the penalty or some part of it is to be paid to him, and the summary conviction is to protect the offender from other proceedings, as under 24 & 25 Vict. c. 96, s. 33, for stealing growing trees (*f*). An information for trespass in search of game need not be at the instance of a party interested in the land or game (*g*). An information may be laid by a common informer against a pawnbroker for not stating truly on the ticket the sum advanced on goods pledged (*h*). Sometimes the information can be laid only by the Attorney or Solicitor General, as under 2 & 3 Vict. c. 12, s. 4, for omitting to print upon books the printer's name, &c. (*i*). The written consent of the corporation of Trinity House, or of the Lord Warden or his lieutenant, was required before proceedings were taken to recover penalties under the Pilot Act, 6 Geo. 4, c. 125, ss. 76, 77 (*k*).

(*f*) *Tarry v. Newman*, 15 M. & W. 645; 15 L. J., M. C. 106, cited and approved of by Hill, J., in *Caswell v. Morgan*, 1 El. & El. 809; 28 L. J., M. C. 209. Unless, however, the party grieved make, authorize or ratify the complaint, his remedy by action, it seems, is not barred by reason of the conviction. See per Parke, B., in *Tarry v. Newman*, 15 M. & W. 654. That case was decided on 7 & 8 Geo. 4, c. 29, s. 39, but the language is the same in sect. 33 of 24 & 25 Vict. c. 96.

(*g*) *Midleton v. Gale*, 8 A. & E. 155; *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213.

(*h*) 39 & 40 Geo. 3, c. 99; *Caswell v. Morgan*, 1 El. & El. 809; 28 L. J., M. C. 208.

(*i*) See *R. v. Johnson*, 8 Q. B. 102, in which case it was held, that where a statute creating offences is in part repealed, and the residue is to be construed as one act with the repealing act by which new offences are created, a clause in such subsequent act, providing that all proceedings for penalties shall be in the name of the attorney-general, does not apply to proceedings for offences created by the first act. See also *Boyce v. Higgins*,

14 C. B. 1. Proceedings for penalties relating to lotteries, under 42 Geo. 3, c. 119, must be in the name of the attorney-general, and by action, whether they are private or state lotteries. *R. v. Tuddenham*, 9 Dowl. 937. See also 8 & 9 Vict. c. 74, s. 4.

(*k*) Repealed by 17 & 18 Vict. c. 120. See 17 & 18 Vict. c. 104, Parts 5, 15, 330—388. See also *Chaney v. Payne*, 1 Q. B. 712, where it was held, with reference to the form of conviction given by the statute, 6 Geo. 4, c. 125, that such consent need not appear on the face of the proceedings. Under the Smoke Nuisance Act (16 & 17 Vict. c. 128, s. 5), no information is to be laid except by the authority of the secretary of state, or of the commissioners of police. See proceedings under the act relating to the carriage of passengers by sea (15 & 16 Vict. c. 44, s. 72). In *Cole v. Coulton*, 2 El. & El. 695; 29 L. J., M. C. 125, an information was laid by a clerk to commissioners under the Town Police Act (10 & 11 Vict. c. 89, s. 35), which enacts that the penalty shall be awarded to the corporation of the town or the commissioners, according as the pro-

Under a statute requiring the complaint to be made by the overseers, the Court held it sufficient for one overseer to make it on behalf of himself and the other (*l*).

A married woman may be convicted on a penal statute Against whom. if she has committed an offence without the coercion, actual or implied, of her husband (*m*); and it is not necessary that her husband should be joined in the conviction. This was so decided in the case of a conviction Feme covert. on 9 Geo. 2, c. 23, for selling gin, to which exception was taken that the defendant appeared to be a *feme covert*, and therefore could make no contract for the sale, or that if she could be convicted of the offence, the husband ought to have been joined for conformity. But it was held, that the conviction was right, for it was an offence which the woman might commit alone (*n*).

An infant may be convicted on a penal statute, provided Infant. he was sufficiently *doli capax* to incur responsibility (*o*).

ceedings for the penalty shall be taken on behalf of one or the other. The clerk had no authority otherwise than from having published by order of the commissioners a notice that the section in the Town Police Clauses Act, 1847, against alehouse-keepers allowing prostitutes to assemble in their houses, would be enforced in the town. Cockburn, C. J., held that the offence was against public policy, and therefore any one might be the informer so long as he professed that the penalty should enure to the benefit of one of the parties named, and Crompton, J., was of opinion that the authority of the commissioners to prosecute sufficiently appeared from the facts.

(*l*) *R. v. Bedingham*, 5 Q. B. 653. By succeeding overseers, *East Dean v. Everett*, 30 L. J., M. C. 117. It is not necessary to have the consent of the Board of Guardians for proceeding against a man for running away and leaving his wife chargeable to the parish, *R. v. Mirehouse*, 32 L. J., M. C. 90.

(*m*) *R. v. Cruse*, 8 C. & P. 541.

(*n*) *R. v. Crofts*, 2 Str. 1120. A

married woman might formerly have been convicted of recusancy, Hob. 96; 11 Co. 61; *Foster's case*; post, "Distress." See also Russell on Crimes, by Greaves (3rd edition), vol. i. p. 20, as to the liability of married women to answer for offences against the criminal law; and 4 Bla. Com. 303; *Marshall v. Rutton*, 8 T. R. 545; *R. v. Robson*, 31 L. J., M. C. 22; *R. v. Wardroper*, 29 Id. 116; and *R. v. Smith*, 27 Id. 204. By the Customs Consolidation Act (16 & 17 Vict. c. 107, s. 288), where any married woman shall be convicted before any justice of any offence against that or any other act relating to the customs, she shall, in default of paying any penalty she may have incurred, be liable to be committed to prison.

(*o*) See *Gray v. Cookson and another*, 16 East, 13, 27, 28; *R. v. Evered*, Cald. 26; *R. v. Sutton*, 3 A. & E. 597; *Kitchen v. Shaw*, 6 Id. 729, 732, 733; *R. v. Chillesford*, 4 B. & C. 94; *Gylbert v. Fletcher*, Cro. Car. 179; Com. Dig. Infant (b. 6); *Wood v. Fenwick*, 10 M. & W. 195, 203; *R. v. Lord*, 12 Q. B. 757, 761. In the last cited case the

Master for act  
of servant.

The general rule of law is, that no one can be made criminally responsible for the acts of third persons (*p*), but in some cases a man may be brought within a penal statute by the acts of his agents or servants. The employment of an agent in the defendant's usual course of business is sufficient *evidence* in such cases, whence the magistrates may, if they think fit, *presume* that such an agent was authorized to do the prohibited act with which it is sought to charge the principal (*q*).

Aiders and  
abettors.

Persons aiding, abetting, counselling or procuring the commission of any offence punishable on summary conviction may be convicted either with the principal, or before or after his conviction, and are liable to the same

court held, that a contract by an infant, binding him to serve during a certain time for wages, but enabling the master to stop the work whenever he chose, and to retain the wages during the stoppage, was wholly void, as not being beneficial to the infant; and a conviction, (under 4 Geo. 4, c. 34, s. 3,) for absenting himself from service, under such contract, was quashed. See also 1 Russell on Crimes (3rd edition), p. 1, as to the liability of infants to answer for criminal offences; 2 Hawk. P. C. (7th edition), p. 39; 1 Hale, P. C. 20; 4 Bac. Ab. 352 (Infancy, H). In misdemeanors (and probably the same rule will be found to prevail with regard to offences punishable on summary conviction) an infant is privileged by reason of his nonage, if the offence charged be a mere non-feasance (unless it be such a matter as he is bound to do by reason of tenure or the like, as to repair a bridge, &c., *R. v. Sutton*, 3 A. & E. 597), because laches shall not be imputed to him. But for any notorious breach of the peace, as riot, battery, or for perjury or cheating, or the like, he is equally liable as a person of full age, if he had discretion to do the act with which he is charged, or, in other words, was *doli capax*. An infant is liable also civilly for trespass or any tort independent of contract.

*Burnard v. Haggis*, 14 C. B., N. S. 45; 32 L. J., C. P. 189; *Bartlett v. Wells*, 1 E. & S. 836; 31 L. J., Q. B. 57; and *Wright v. Leonard*, 11 C. B., N. S. 258; 30 L. J., C. P. 365.

(*p*) See per Crompton, J., *Hearne v. Garton*, 2 El. & El. 66; 28 L. J., M. C. 216.

(*q*) *Attorney-General v. Siddon*, 1 C. & J. 220; *Attorney-General v. Riddle*, 2 Id. 493; *Attorney-General v. Burges*, Bunb. 223; *Mitchell v. Torup*, Parker's Rep. 227; *Hern v. Nichols*, 1 Salk. 289; Smith's Merc. Law, by Dowdeswell, 159 (5th edition). Owner of market when liable for a nuisance therein, *Draper v. Sperring*, 10 C. B., N. S. 113; 30 L. J., M. C. 225; Keeper of place of public resort when responsible as principal for acts of servant, and servant responsible as aider and abettor, *Wilson v. Stewart*, 3 B. & S. 913; 32 L. J., M. C. 198; Charter-master of a coal mine aiding and abetting banksmen to violate rules regulating the working of the mine, *Howell v. Wynne*, 32 Id. 241; Owner of a vessel may be convicted for obstructing a navigable river, viz. throwing rubbish therein (under 54 Geo. 3, c. 159, s. 11), although he was not on board at the time when the act was done, *Michell v. Brown*, 28 L. J., M. C. 53. As to the parties liable for sending dangerous goods by railway, see *Hearne v. Garton*, Id. 216.

punishment. They may be proceeded against either in the place where the principal was or may be convicted or where the offence of aiding, &c. was committed (*r*).

An information may be against one of several joint-owners of a colliery for disobedience of the rules for working the colliery in sect. 4 of 18 & 19 Vict. c. 108 (*s*).

Where the act is such that several may join in it, all the offenders may be included in the same information and conviction (*t*). But where separate convictions were drawn up upon a joint information, the Court refused to order the justices to alter the conviction by making it a joint one (*u*).

Whenever the information is required by statute to be in writing, that form must be preserved, but, unless expressly directed, it is not necessary that it should be so (*x*). The statute 11 & 12 Vict. c. 43, makes no alteration in this respect, although it seems to assume that which

(*r*) 11 & 12 Vict. c. 43, s. 5. As to punishment, see 24 & 25 Vict. c. 96, ss. 97, 99, and c. 97, s. 63. See *Ex parte Smith*, 3 H. & N. 227; 27 L. J., M. C. 186; *Wilson v. Stewart*, and *Howell v. Wynne*, *supra*.

(*s*) *R. v. JJ. Monmouthsh.* 26 L. J., M. C. 183.

(*t*) In *R. v. Cridland*, 7 E. & B. 853, 870; 27 L. J., M. C. 28, 29, 32, Mr. Justice Crompton said, "I do not agree to the proposition that, consistently with sect. 10 of 11 & 12 Vict. c. 43, several defendants can be convicted on one conviction on one information for an offence which is separate in its nature, and which is therefore a separate offence by each of them." It was not necessary to decide this point in that case, the conviction, which was for trespass in pursuit of game, being invalid on other grounds. It is submitted, however, that the doubt expressed by the learned judge is not well founded. There seems no reason why a separate penalty should be different from a separate imprisonment, and if two

or more persons may be proceeded against before a Court of Quarter Sessions by a joint proceeding, it would seem that the proceedings against them, under the Summary Jurisdiction Act, might be in the same form; further, the 11 & 12 Vict. c. 43, appears to be intended to provide against duplicity in the information as to offences rather than the number of offenders, and the provisions of the Criminal Consolidation Acts seem to favour this interpretation. See 24 & 25 Vict. c. 96, ss. 106, 120; 24 & 25 Vict. c. 97, ss. 64, 76.

(*u*) *Re Clec and another*, 21 L. J., M. C. 112.

(*x*) Per Parke, B., *R. v. Millard*, 17 Jur. 400; 22 L. J., M. C. 108, S. C.; *R. v. Bedingham*, 5 Q. B. 633; *Ex parte Perham*, 5 H. & N. 30; 29 L. J., M. C. 33, 35; *Turner and another v. Postmaster-General*, 34 Id. 10; and see *R. v. Rawlins*, 8 C. & P. 439. 11 Geo. 2. c. 19, s. 4, relating to the fraudulent removal of goods, requires the complaint to be in writing; see *R. v. Fuller*, 2 D. & L. 98;

is indeed the almost invariable practice, namely, that the information will be in writing, by providing for statements therein as to the ownership of property (*y*), the negating of exemptions (*z*), and for variances between the information and the evidence (*a*). Sometimes a statute expressly dispenses with a written information, as in the General Highway Act (5 & 6 Will. 4, c. 50, s. 101), and the General Turnpike Act (4 Geo. 4, c. 95, s. 13); so, by 11 & 12 Vict. c. 43, s. 8, it is declared, that in all cases of complaint upon which a justice or justices may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament, upon which such complaint shall be framed.

When upon  
oath.

Nor is it requisite that the information or complaint be upon *oath*, if not enjoined by the letter of the statute (*b*), unless a warrant to apprehend the person charged is issued in the first instance instead of a summons, in which case the matter of the information must always be substantiated by the oath or affirmation of the informant, or of some witness on his behalf before the warrant is issued (*c*). Whenever, in other cases, the information is taken on oath, the justice must be careful to administer the oath before he takes the information or deposition of the party or his witnesses; for where a justice had taken the information and examination of the witnesses, with a view to a convic-

*Coster v. Wilson*, 3 M. & W. 411; *R. v. Davis*, 5 B. & Ad. 551. An adjudication, under the Lands Clauses Act, of compensation to a party whose lands have been injuriously affected is in the nature of an award, and need not be in writing; *R. v. Combe*, 32 L. J., M. C. 67.

(*y*) Sect. 4.

(*z*) *Id.* 14.

(*a*) *Id.* 9.

(*b*) 11 & 12 Vict. c. 43, s. 10; per *Parke, B.*, *R. v. Millard*, 17 Jur.

400; 22 L. J., M. C. 108, S. C.; and see *R. v. Willis*, Bosc. 16; *Basten v. Carew*, 3 B. & C. 649; 5 D. & R. 558; 2 D. & R. (M. C.) 563; *R. v. Standish*, Burr. Sett. Cas. 150; *R. v. Bissex*, Burn's Justice, tit. "Distress," p. 217 (29th edition).

(*c*) 11 & 12 Vict. c. 43, ss. 10, 2. The warrant will be bad unless it state that the information was substantiated on oath; see form (C) in schedule to 11 & 12 Vict. c. 43, and *Caudle v. Seymour*, 1 Q. B. 889.

tion on the former game laws, and then administered the oath, the Court expressed its strong disapprobation of the irregularity of such practice, and said it was the duty of the justice to administer the oath in the first instance, in order that the party should be under its sanction at the time he gave his testimony (*d*). Sometimes the statute, though it does not require the information to be on the oath of the informant, in the first instance, yet requires the charge contained in it to be substantiated on the oath of some other person, being a credible (*e*) witness, before any proceedings are taken upon it (*f*). On application for an order in bastardy, after twelve months from the birth of the child, the summons is to be granted only on proof that the alleged father has paid money for its maintenance within that period (*g*), and it seems that such proof should be *upon oath*, but, as the proceeding is rather civil than criminal, the omission of the oath may be waived by the defendant appearing and going into the merits of the case without taking the objection (*h*).

The deposition should be made in the presence of the magistrate; and where it was taken in his absence by his clerk, it was held to be irregular, and to be no justification for proceedings founded upon it (*i*).

Should be taken in presence of magistrate.

Formerly several offences might have been included in one information or complaint, but now it should be for one offence or matter of complaint only (*k*). This, however, does not prevent a principal and an abettor from being charged in the same information, nor the offence from being laid as having been committed on divers days and

To be for one offence only.

(*d*) *R. v. Kiddy*, 4 D. & R. 734.

(*e*) *I. e.*, competent.

(*f*) As under the Game Act, 1 & 2 Will. 4, c. 32; 6 & 7 Will. 4, c. 65, s. 9. *R. v. Scotton*, 5 Q. B. 493; 13 L. J., M. C. 58; and see *R. v. Berry*, 28 L. J., M. C. 90; *R. v. Watts*, 33 L. J., M. C. 63.

(*g*) 7 & 8 Vict. c. 101, s. 2.

(*h*) *R. v. Berry*, 28 L. J., M. C. :

*diss. Martin*, B.

(*i*) *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Constable*, *Id.* 894, n. (*a*); *R. v. JJ. Darton*, 12 A. & E. 78; 3 P. & D. 483, S. C.

(*k*) 11 & 12 Vict. c. 43, s. 10. See *R. v. Cridland*, 7 E. & B. 853, 27 L. J., M. C. 28. See *post*, Convictions.

times between two dates (*l*). The swearing of several profane oaths on one and the same occasion is but one offence, although the offender is liable to a penalty for each oath so sworn (*m*).

Negating  
exceptions.

The important rules which relate to the negating of exceptions in the description of the offence will be more properly treated of under the head of convictions; it is here sufficient to state, that by 11 & 12 Vict. c. 43, s. 14, it is not necessary for the prosecutor or complainant to prove such negative, but the defendant must prove the affirmative, if he relies upon it for his defence (*n*).

Not recited in  
conviction.

Before the statute 11 & 12 Vict. c. 43, the information, as well as the evidence by which it was supported, was recited in the conviction and was therefore open to objection as a part of it. The information was then required distinctly to set forth the day and year on which—the place where—and the name and style of the justices before whom it was exhibited, and also the charge itself. Now, however, the information does not appear on the face of the conviction (*o*), it need not, as we have seen, even be in writing, unless required to be so by statute: and no objection can be taken for any defect in it, whether it be a defect in substance or in form, nor (except for the purpose of adjournment) to any variance between it and the evidence adduced in support of it (*p*); but this does not justify an information for one offence and a conviction for a different one under another Act of Parliament, or

Variance.

(*l*) *Onley v. Gee*, 30 L. J., M. C. 222.

(*m*) *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15.

(*n*) See *post*, Evidence.

(*o*) But where the stat. 11 & 12 Vict. c. 43, does not apply, and the form of the conviction given by the act, under which proceedings are taken, does not justify the omission of any statement as to the information, it should be set forth on the face of the conviction, together with all other matters necessary to show that the justices had jurisdiction.

See *R. v. Hareby*, Andr. 361, where an order was quashed because no complaint was set out therein. On a complaint under the Masters' and Servants' Act (4 Geo. 4, c. 34), the defendant was described as the servant of "*B. and others*," when he had contracted to serve B. on behalf of himself and partners constituting "the Railway Company, limited," the variance was held to be immaterial. *Whittle v. Frankland*, 2 B. & S. 49; 31 L. J., M. C. 81.

(*p*) 11 & 12 Vict. c. 43, ss. 1, 9.



punishable in a different manner (*q*). Special provision is made for variances as to time and place assigned to the offence. These are not to be deemed material, if it be proved that the information was in fact laid within the time limited by law, and that the offence was committed within the jurisdiction of the justices by whom the information is heard. But, if such or any other variances between the information and the evidence appear to the justices at the hearing to be such that the party charged has been thereby deceived or misled, they may adjourn the hearing to a future day, on such terms as they think fit, and in the meantime may commit the defendant to prison or discharge him on recognizance, with or without sureties (*r*). Notwithstanding these important changes in the law, the decisions which have proceeded upon that part of the information containing the charge are still applicable to convictions, which must state the offence and the time and place of its having been committed (*s*). We shall therefore consider them under that head.

Variance between information and evidence.

It may here be noticed that the wrongful detainer of a party against whom an information has been laid does not invalidate subsequent proceedings. Thus, under the Smuggling Act (8 & 9 Vict. c. 87, s. 58), which authorizes a justice to detain the party charged for a reasonable time, (in order to allow of the information, &c. being prepared,) and at the expiration thereof to cause him to be brought before any two justices, who are to determine the matter, it was held, that although the party charged was detained an unreasonable time and then convicted, the conviction was still valid (*t*).

Detaining party charged on information.

The magistrate being possessed of the charge, it becomes his duty either to dismiss it upon hearing, or to pro-

Justice bound to proceed.

(*q*) *Martin v. Pridgeon*, 1 El. & El. 778; 28 L. J., M. C. 179; see *ante*, p. 67.

(*r*) 11 & 12 Vict. c. 43, ss. 1, 9. See *post*, Appearance.

(*s*) 11 & 12 Vict. c. 43, s. 17, and schedule. In *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M.

C. 81, 90, Lord Campbell, C. J., said, "The technicalities of an indictment, or even an information under a penal statute, are not required in the complaint; it is only to set forth the nature and particulars of the offence charged."

(*t*) *Van Boven's case*, 9 Q. B. 669.

Declining  
jurisdiction.

ceed to the examination of it (*u*). So where the liberation, or forfeiture, of property seized under the acts relating to the customs or excise depends upon the adjudication of the magistrates before whom the information is laid, they are bound either to proceed, or to discharge the information altogether. Thus, on an information exhibited by an officer of the customs, under 6 Geo. 1, c. 1, upon a seizure of brandy, though the facts appeared not to warrant the seizure, yet the justices refused to dismiss the information, so as to enable the party to reclaim his property: and, upon a motion stating these circumstances, a *mandamus* was issued to compel them to proceed to a determination (*x*).

Before making an application for a *mandamus*, or for a rule calling upon the justices to hear and determine a matter brought before them, care must be taken to distinguish between those cases in which they have declined to enter upon the inquiry, in consequence of a mistaken view of the law as to some preliminary point, and those in which, having entered upon the inquiry they have actually arrived at a decision, however erroneous it may be (*y*). In the former instance, in which they are said to decline jurisdiction, the Court will compel them to proceed; in the latter the Court will not interfere, except upon a case reserved, or there has been a want or excess of jurisdiction or the conviction or order is bad on the face of it. In order to constitute such a declining of jurisdiction as will warrant the intervention of the Court, the wrong conclusion to which the magistrates have come in respect of the preliminary matter must be one of *law*, not

(*u*) See 11 & 12 Vict. c. 43, s. 14. And this without taking an indemnity, *Selwood v. Mount*, 9 C. & P. 75.

(*x*) *R. v. Tod*, 1 Str. 530; and see *R. v. Bolton*, 1 Q. B. 66; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121. In *Ex parte Davey*, 2 Dowl. N. S. 24, the court refused to compel justices to hear a complaint and proceed summarily under the statute re-

lating to forcible entry and detainer, the remedy by indictment being still open.

(*y*) See *R. v. Dayman*, 7 El. & Bl. 672; 26 L. J., M. C. 128; *R. v. Paynter*, 7 El. & Bl. 328; 26 L. J., M. C. 102; *R. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183; *R. v. Dickenson*, 3 Jur., N. S. 1076.

of fact (*z*), or it must be a mixed question of law and fact (*a*). It is sometimes difficult to trace the dividing line in these cases, but it was clearly drawn upon a recent occasion under the following circumstances:—

A statute provided, that if the election of any deputy should be opposed, and notice thereof in writing be given or delivered to him within a certain time, the assembled deputies should inquire into and determine the validity of the election. Proof was given that notice had been served in due time upon the wife of the party objected to at his dwelling-house, but the meeting decided that personal service was essential, and therefore refused to inquire into the validity of the election. It was held by the Court, that there had been a declining of jurisdiction under a mistake of law. With respect, however, to another party objected to, evidence was given of personal service of the notice in due time, but the meeting, not believing the statement of the witness, decided that the disputed election was valid; the Court held, that the deputies having decided a question of fact, over which they had jurisdiction, their decision was final (*b*). Lord *Campbell* on that occasion said, “where justices, or others,

(*z*) Per *Patteson, J.*, in *R. v. Recorder of Liverpool*, 1 L. M. & P. 682; 20 L. J. (N. S.) M. C. 35; *Re Pratt*, 7 A. & E. 27.

(*a*) *R. v. Hinckley*, 3 B. & S. 885; 32 L. J., M. C. 158.

(*b*) *R. v. Goodrich and others*, 19 L. J., Q. B. 413; 14 Jur. 914, S. C., overruling *R. v. JJ. Cumberland*, 4 A. & E. 695. See *R. v. Cotton*, 15 Q. B. 569; *R. v. Blanshard*, 13 Q. B. 318; *R. v. Recorder of Liverpool*, 1 L. M. & P. 682; 20 L. J., M. C. 35; *R. v. Charlesworth*, 2 L. M. & P. 117; 20 L. J., M. C. 181; *R. v. Recorder of Bolton*, 18 L. J., M. C. 139; 2 D. & L. 510; *R. v. JJ. West Riding of Yorksh.*, 1 Q. B. 624; 2 Q. B. 331; *R. v. JJ. Carnarvon*, 2 Q. B. 325; *R. v. JJ. Flintsh.*, 2 D. & L. 143; 16 L. J., M. C. 55, S. C.; *R. v. Aston*, 1 L. M. & P. 491; 14 Jur. 1045, S. C.; *R. v. JJ. Great Yarmouth*, 4

New Sess. Cas. 313; *R. v. JJ. Kesteven*, 3 Q. B. 810; *R. v. Byrom*, 12 Q. B. 321; 17 L. J., M. C. 134; *Re Pratt*, 7 A. & E. 27 (case of appeal from conviction); *Ex parte British Patent Company*, 7 Dowl. 614; *Re Clee and Osborne*, 21 L. J., M. C. 112, B. C.; *R. v. Colling*, 17 Q. B. 816; 21 L. J., M. C. 73; 16 Jur. 422; *R. v. JJ. Worcestersh.*, 3 El. & Bl. 477; *R. v. Overseers of Warblington*, 22 L. T. 304; *R. v. JJ. Bristol*, 18 Jur. 426; 3 El. & Bl. 479, n. (*a*); *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121. As to the costs of the mandamus or rule, see *R. v. Ingham*, 17 Q. B. 884; *R. v. JJ. Surrey*, 14 Q. B. 684; 19 L. J., M. C. 171; *R. v. Charlesworth*, 2 L. M. & P. 117; 20 L. J., M. C. 181; *R. v. JJ. Middlesex*, 15 Jur. 907; *Leamington Priors Commissioners v. Moultrie*, 7 D. & L. 311; *R. v. Brown*, 13 Q. B. 654. Sometimes the

on a mistaken view of the law, refuse to hear on a point on which jurisdiction depends, we call upon them to go into the inquiry. But when they have heard and decided, we do not review their decision. On that principle, writs of mandamus to hear appeals against orders of removal have proceeded. If they mistake the law and require an unreasonable service of the notice, they decline jurisdiction, but if they have once heard and decided, their decision must be final." It matters not at what stage of the case the magistrates decline to proceed, because whether they have jurisdiction or not is the cardinal point, which affects the proceedings from the beginning, however far advanced they may be (c). It has been suggested as a test:—Is the objection such that whatever the merits of the case, whether the defendant be guilty or not, the justices hold that they cannot decide upon the merits, owing to the objection in point of law, *e. g.* want of parties or of notice? Such holding is a declining of jurisdiction and not an adjudication (d). Where magistrates have a discretion vested in them, whether they will proceed or not, and, in the exercise of such discretion, have refused to proceed, the court will not order them to do so; but in such case they must have really exercised their discretion or judgment in the matter, and not have acted from mere caprice or from notions of what the law ought to be instead of what it is, although the statute may have said, they are to proceed "if they think fit" (e).

justices are ordered to pay the costs; see *R. v. Boteler*, 4 B. & S. 959; 33 L. J., M. C. 101, 103. A rule for issuing a distress warrant was obtained on an affidavit showing only the refusal to issue it, but not the proceedings before the justices, nor the reason why they refused; the parties showing cause against the rule made no affidavit; it was held that the affidavit must be construed in favour of the party making it, and that it was unnecessary, in the first instance, to set out the proceedings before the justices; *R. v. Deverell and another*,

3 El. & Bl. 372; see *R. v. Kingswinford*, 3 El. & Bl. 688; also *Stokes v. Grissell*, 14 C. B. 678, as to affidavits making out a *prima facie* case. What is not a sufficient refusal to adjudicate, *R. v. Paynter*, 7 El. & Bl. 328; 26 L. J., M. C. 102.

(c) *R. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183, per Erle, J.

(d) *Id.*, per Coleridge, J.

(e) *Reg. v. Boteler and others*, 4 B. & S. 959; 33 L. J., M. C. 101; where see definition of judicial discretion.

As a general rule, magistrates ought not to entertain criminal charges arising out of civil proceedings which are still pending, at all events, except for the purpose of holding the accused person to bail, unless the cause has been postponed to allow the criminal charge to be first disposed of. Of course, therefore, in the absence of such postponement, the Court will not compel justices to proceed on the criminal charge while the cause is pending (*f*).

Criminal charges arising out of civil proceedings still pending.

### SECT. 3.—*Of issuing the Summons.*

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If the information appears to justify the interference of the magistrate, the next step is to give the party accused notice of the accusation, and an opportunity of answering it, by issuing a summons, containing the substance of the charge, or by granting a warrant for his apprehension (*g*). This method of proceeding is pointed out by stat. 11 & 12 Vict. c. 43, ss. 1, 2, but, independently of positive enactment, the law declares that the magistrates, to whom the cognizance of offences is referred, are bound to observe the rules of natural justice,—one of which is, that the accused should have an opportunity of being heard before he is condemned (*h*). This is indispensably required in all penal proceedings of a summary nature by justices of the

Where a summons is necessary.

(*f*) *R. v. Ingham*, 14 Q. B. 396. It is the practice of the Central Criminal Court not to try an indictment for perjury arising out of a civil action, until such action is determined, unless the trial of the action has been postponed by the Court, in order that the indictment may be tried first; *R. v. Ashburn*, 3 C. & P. 50.

(*g*) By the Criminal Law Consolidation Act (24 & 25 Vict. c.

96, s. 105), when any person is charged on the oath of a credible witness before a justice with any offence punishable on summary conviction under that act, the justice may summon the party charged to appear, &c.

(*h*) Per Parker, C. J., *R. v. Simpson*, 10 Mod. 379; *R. v. Dyer*, 1 Salk. 181; 6 Mod. 41; Dalt. c. 6; 1 Str. 561; *R. v. University of Cambridge* (*Dr. Bentley's case*), 1 Stra.

peace (*i*). It is declared by Lord *Kenyon* to be an invariable rule of law (*k*); and is stated by Mr. Serjeant *Hawkins* to be implied in the construction of all penal statutes (*l*). Thus when a District Board of Works was empowered by statute to order a building to be demolished or altered, if erected without notice being first given by the owner of the building to the Board, it was held that they were bound to afford him an opportunity of showing cause why it should not be demolished before they exercised their powers, although the statute was silent on the subject. On that occasion *Willes, J.*, said, "Every tribunal invested with the power of affecting the property of her Majesty's subjects is bound to give the parties against whom the powers are to be exercised an opportunity of being heard. This rule is universally applicable." (*m*) So jealous is the law to enforce this equitable rule, that the neglect of it by a justice, in proceeding summarily without a previous summons to the party, has been treated as a misdemeanour, proper for the interference of the Court of Queen's Bench by information (*n*); which has

557; *Webb v. Batchelour*, 1 Vent. 273; *Freem.* 489, *S. C.* See also *Bagg's case*, 11 Co. 99. Lord Coke adopts as a principle of law the passage of Seneca:

"*Qui aliquid statuerit parte inaudita altera,  
Æquum licet statuerit, haud æquus  
fuerit.*"

(*i*) *R. v. Dyer*, 1 Salk. 181; 6 Mod. 41; and the cases collected in 8 Mod. 154, n. (*a*). See also *R. v. Green*, Cald. 391; *Harper v. Carr*, 7 T. R. 270; *R. v. Gaskin*, 8 Id. 209; *Capel v. Child*, 2 C. & J. 558; *Stevens v. Evans*, 2 Burr. 1152, 1157-59; *Becquet v. Macarthy*, 2 B. & Ad. 951; *Re Hammersmith Rent-charge*, 4 Exch. 87; per Parke, B., *Id.* 97; *Bartlett v. Kirwood*, 2 El. & Bl. 771.

(*k*) *R. v. Benn*, 6 T. R. 198.

(*l*) 1 Hawk. 420.

(*m*) *Cooper v. Wandsworth Board of Works*, 14 C. B., N. S. 180; 32 L. J., C. P. 185, 187.

(*n*) *R. v. Venables*, 2 Ld. Ray. 1405. Per cur. *R. v. Simpson*, 1 Str. 46; *R. v. Allington*, 1 Str. 678. It is said in the report of *R. v. Heber*, 2 Barn. 101, that an information was granted against a magistrate for convicting a person without any previous notice, he happening to be present when another was convicted upon a similar charge. But when that report was cited in *R. v. Stone*, 1 East, 642, Lord Kenyon said, that Barnardiston was an inaccurate reporter, and that probably, if the conviction was looked into, it would appear either that the defendant was not called upon for his defence, or had not proper time given him upon request. If a person voluntarily appears before a magistrate and a charge is then made against him, it seems that neither information nor summons is necessary. Per Erle, C. J., in *R. v. Shaw*, 13 W. R. 692; and see *post*, p. 88.

been granted upon affidavits of the fact(o). As this is a privilege of common right, which requires no special provision to entitle the defendant to the advantage of it, so it cannot be taken away by any custom (p).

It may, however, be dispensed with by a statute.

Dispensation  
of summons or  
notice.

“No proposition can be more clearly established,” said Mr. Baron *Parke*, in delivering the judgment of the Court of Exchequer Chamber, in a recent case(q), “than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding(r) until he has had a fair opportunity of answering the charge against him, unless, indeed, the legislature has expressly or impliedly given an authority to act without that necessary preliminary.” The following case affords an illustration of an implied dispensation of notice to the party liable to be affected by the judgment of a Court:—Statutes establishing a Court of Requests for a sea-port town enacted, that process by summons might issue against persons sailing to and from the port, and that the summons might be served, “personally, or by leaving the same at the dwelling-house” of such debtor. It was held that the summons, being left with the wife of a seafaring man at his lodging, within the jurisdiction, was sufficient to warrant execution under these statutes, although the debtor, during all the proceedings, was absent on a voyage to India(s).

It is not necessary to issue any summons when an ap-

(o) *R. v. Harwood*, 2 Str. 1088; 3 Burr. 1716, 1786; *R. v. Constable*, 7 D. & R. 663; 3 D. & R. Mag. Ca. 488.

(p) Dict. *R. v. University of Cambridge*, 8 Mod. 163.

(q) *Bonaker v. Evans*, 16 Q. B. 162, 171. See *Bartlett v. Kirwood*, 2 El. & Bl. 771; *Re Hammersmith Rent-charge*, 4 Exch. 87; *Kinuing v. Buchanan*, 8 C. B. 271; *Kinuing's case*, 10 Q. B. 730; *Hammond v. Bendyshe*, 13 Id. 869; *Ex parte Ramshay*, 18 Q. B. 173; 21 L. J., Q. B. 238; 16 Jur. 684; *Skingley v. Surridge*, 11 M. & W.

503; *R. v. Overseers of Warblington*, 22 L. T. 304; *Painter v. The Liverpool Gas Company*, 3 A. & E. 433; *R. v. Guardians of Totness Union*, 7 Q. B. 690; *Ex parte Story*, 12 C. B. 767. *Re Brook*, 16 C. B., N. S. 403; 33 L. J., C. P. 246.

(r) “The rule has been applied to cases other than those, which are in the strictest sense judicial.” Per Erle, C. J., in *Cooper v. Wandsworth Board of Works*, 14 C. B., N. S. 180; 32 L. J., C. P. 187.

(s) *Culverson v. Melton*, 12 A. & E. 753.

plication for an order of justices is by law to be made *ex parte* (t).

Summons or  
warrant.

Upon a sufficient information properly laid, and where there is no reasonable doubt of their jurisdiction, the magistrates are bound to issue a summons or warrant, and proceed to a hearing: and if they refuse to do so, they will be compelled by rule or *mandamus* (u).

If the information be for a penalty, or the non-payment of money, the magistrate should in general issue a summons in the first instance, before he grants a warrant, unless it is probable that the party will abscond as soon as he hears of the information, or the object of the prosecution will be otherwise defeated (x).

Form of sum-  
mons.

The summons (y) should be directed to the party against whom the charge is laid; and should be under the hand and seal of the justice himself by whom it is issued (z).

A form of summons is given in the schedule to 11 & 12 Vict. c. 43, and previously to that statute it was held, that where a particular form of notice was prescribed, it must be strictly pursued (a).

The intention of the summons being to afford the person accused the means of making his defence, it contains the substance of the charge, and fixes a day and place for his appearance; allowing a sufficient time for the attendance of himself and his witnesses (b). A summons to appear

(t) 11 & 12 Vict. c. 43, s. 1; and see *Ex parte Monkleigh*, 17 L. J. M. C. 76, 79; 5 D. & L. 404, S. C.; effect of appearance in waiving objection for want of summons, *post*, pp. 88, 97.

(u) *R. v. Benn*, 6 T. R. 198; 11 & 12 Vict. c. 44, s. 5. See *ante*, p. 78.

(x) *R. v. Martyr*, 13 East, 61; *R. v. JJ. Stafford*, 3 A. & E. 425.

(y) See form in the Appendix.

(z) 11 & 12 Vict. c. 43, s. 1, schedule (A); and see, before that statute, *R. v. Steventon*, 2 East, 365. It appeared that it had uniformly been the practice of the commissioners of the excise to issue sum-

mons for the attendance of witnesses, with the name of the solicitor of the excise only, printed at the foot; and this was supported on the ground of invariable usage alone. But Lord Kenyon, in that case, alluding to convictions by other magistrates, says, "As to justices, I will take for granted, that they always sign the summonses issued by them, as they have been used to do." *Id. ib.*

(a) *R. v. Croke*, Cowp. 30. See observations on this case, in *Taylor v. Clemson*, 11 Cl. & Finn. 650.

(b) 11 & 12 Vict. c. 43, s. 1, and form (A) sched.; *R. v. Johnson*, 1 Str. 261.



immediately upon the receipt thereof has been thought insufficient in one case (*c*). In another, an objection made to the summons, that it was to appear on the same day, was only removed by the fact of the defendant having actually appeared, and so waived any irregularity in the notice (*d*). It is equally necessary, that it should be to appear at a place certain: otherwise, the party commits no default by not appearing; and the magistrate cannot proceed in the defendant's absence upon a summons defective in these particulars without making himself liable to an information (*e*).

The summons should require the party to appear before the same justice or justices who received the information, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place, as shall then be there, to answer to the said information, and to be further dealt with according to law (*f*).

If a summons issue for an offence under one statute and the conviction proceed upon another, this is an excess of jurisdiction for which the conviction may be quashed (*g*).

Offence in  
summons  
should be fol-  
lowed in the  
conviction.  
When issued.

If the application for the summons be made within the time limited by statute for that purpose, it is sufficient, although the issuing of the summons may be suspended for a time by the magistrate. Therefore, although the application by the mother of a bastard child for a summons against the alleged father must be made within twelve months from the birth of the child, it is not necessary that the summons should thereupon immediately issue, if the justice thinks it would be useless, in consequence of the applicant not knowing the residence of the father, or the like (*h*).

(*c*) *R. v. Mallison*, 2 Burr. 681.

(*d*) *R. v. Johnson*, 1 Str. 261.

(*e*) *R. v. Simpson*, 1 Str. 44.

(*f*) 11 & 12 Vict. c. 43, s. 1; and see ss. 2, 13.

(*g*) *Ante*, p. 65.

(*h*) *Potts v. Cumbridge*, 8 El. & Bl. 847; 27 L. J., M. C. 62. A

second application for the summons after the twelve months in such case was held to be a mere continuation of the first application, and therefore the summons issued thereon was decided to be free from objection. See *R. v. Pickford*, Ell. B. & S. 77; *ante*, p. 51.

Service of the  
summons.

It was formerly a question, whether the service of the summons should be *personal*. It was thought in general necessary that it should be so, unless where personal service was expressly dispensed with by statute. Lord C. J. *Parker* was of that opinion<sup>(i)</sup>, and the provisions specially introduced into many acts of parliament, to make a service at the dwelling-house sufficient, seemed to justify the inference, that the law in other cases required a service upon the person. By 7 & 8 Geo. 4, c. 53, s. 66, in cases relating to the *Excise* (except where particular provisions are made), a summons directed to the party in his real or assumed name, which is left at the place used or occupied by him for carrying on trade or business, or at the place where the offence is committed, or the seizure made, or at his place of residence, or with his wife or child, or menial servant, is to be deemed legal notice. And in all offences against statutes relating to the *Customs*, or to trade or navigation, the summons may be left at the last known place of residence, or on board any ship or vessel to which the defendant may belong, or may have lately belonged<sup>(k)</sup>. The Criminal Law Consolidation Act (24 & 25 Vict. c. 96, s. 105) points out a mode of compelling the appearance of persons charged with offences thereunder, by delivering the summons to the party personally, or leaving the same at his usual place of abode. The service of summonses for offences against the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, is by delivering a copy to the party, or at his usual place of abode to some inmate thereof, and explaining the purport thereof to such in-

(i) 10 Mod. 345; and see *R. v. Hall*, 6 D. & R. 84; 3 D. & R. Mag. Ca. 19.

(k) 8 & 9 Vict. c. 87, sect. 83. Other acts, which particularly authorized a service at the house, &c., were:—35 Geo. 3, c. 113, s. 6, by which it was sufficient to leave a summons at the house, out-house, cellar, vault, &c., of any person selling ale without licence, and by the name under which he entered

the house; 25 Geo. 3, c. 65, ss. 13, 14, relating to offences against the salt duties; 36 Geo. 3, c. 88, s. 26, against frauds in the sale of hay and straw; 36 Geo. 3, c. 111, and 39 Geo. 3, c. 81, s. 10, against unlawful combinations by workmen; 50 Geo. 3, c. 48, regulating stage coaches, which directed the summons for the coachman to be left with the book-keeper, &c. *Vide R. v. Clement*, 4 B. & A. 218.

mate(*k*). And now by 11 & 12 Vict. c. 43, s. 1, service in all cases(*l*) may be effected by delivering the summons to the party personally, or by leaving the same with some person for him at his last(*m*) or most usual place of abode. In these and the like cases leaving a *copy* at the house is sufficient(*n*), and the delivery may be to a person on the premises, apparently residing there as a servant(*o*). If, however, the service is under a statute limited in its operation to England and Wales, it must be made within their territorial limits; thus, an order in bastardy having proceeded on a summons, which had been served on the putative father in Scotland, was quashed on the ground that it had been made without jurisdiction(*p*).

The summons may be served by a constable, peace officer or other person to whom it has been delivered(*q*). The service, where no time is limited by the particular statute, should be made a reasonable time before the period appointed therein for appearance(*r*).

The sufficiency of the service is generally a question for the justices to decide(*s*), and the Court will not interfere with their decision, unless it clearly appear that there

Question of due service, one for the justice.

(*k*) Sect. 127.

(*l*) It must be borne in mind that certain matters are exempted from the operation of the act; *ante*, p. 60.

(*m*) Which means, present place of abode, if the party has any, and the last which he had, if he has ceased to have any; *Ex parte Rice Jones*, 1 L. M. & P. 357; 19 L. J., M. C. 151, S. C.; and see *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. Place of business is in general a place of abode within statutes providing for service of notices, &c. *Mason v. Bibby*, 33 L. J., M. C. 105; *Flower v. Allan*, 2 H. & C. 688; 33 L. J., Exch. 83.

(*n*) *R. v. Chandler*, 14 East, 267.

(*o*) *Id. ib.*

(*p*) *R. v. Lightfoot*, 6 E. & B. 822; 25 L. J., M. C. 115, *diss.* Lord Campbell, C. J. The defendant did not appear to the summons. In that case, Crompton, J., said, "If

the act had not been limited to England and Wales it would probably have been deemed as an act of the United Kingdom, to have had operation as to procedure in the United Kingdom only. I know of no instance of process being sufficiently served in a foreign country, except under the special provisions of some statute."

(*q*) 11 & 12 Vict. c. 43, s. 1.

(*r*) *Id.* ss. 2, 13.

(*s*) *Re Williams*, 2 L. M. & P. 580; 15 Jur. 1060; 21 L. J., M. C. 46, S. C.; and see *Ex parte Hopwood*, 15 Q. B. 121; *Zohrab v. Smith*, 5 D. & L. 635; *Robinson v. Lenaghan*, *Id.* 713; 2 Exch. 333, S. C.; *Ex parte Davies*, 17 Jur. 577; and also 11 & 12 Vict. c. 43, s. 2. Effect of serving summons on wrong person; *Kelly v. Lawrence*, 3 H. & C. 1; 33 L. J., Exch. 197.

was in fact no service(*t*), or that the defendant was not allowed the interval fixed by the particular statute between the service and the time limited for appearance(*u*), or that the justices have mistaken the law as to the kind of service required, and have, therefore, declined to entertain the matter(*x*).

Effect of appearance.

The foregoing rules, however, it should be observed, apply only to those cases where the defendant does not in fact appear: for, if he actually appears and pleads, there is no longer any question upon the sufficiency or regularity of the summons or its service(*y*).

Summons not recited in the conviction.

Formerly it was necessary that the fact of the party having been summoned should be stated upon the conviction, unless he had appeared without any summons, although a different rule prevailed with regard to proceedings classed under the denomination of orders. In the latter case, if the justices had jurisdiction, the fact of the defendant having been summoned was presumed, unless the contrary appeared(*z*). The summons is not now mentioned in the conviction, and no objection can be taken to the summons for any defect in substance or in form, or for any variance between it and the evidence adduced at the hearing; but if such variance appears to the justices to

Not open to objection.

Variance.

(*t*) *Ex parte Rice Jones*, 1 L. M. & P. 357; 19 L. J., M. C. 151, S. C., where it was held by Mr. Justice Coleridge, that, although by 7 & 8 Vict. c. 101, s. 3, the justices had jurisdiction to make an order of affiliation "on proof that the summons had been duly served," yet, if it was afterwards shown, in point of fact, that the summons was not served, a *certiorari* might issue to bring up the order for the purpose of its being quashed. See also *R. v. Totness*, 7 Q. B. 690.

(*u*) *Mitchell v. Foster*, 12 A. & E. 472.

(*x*) *R. v. Goodrich and others*, 19 L. J., Q. B. 415; 14 Jur. 914, S. C.; and see *Mason v. Bibby*, 33

L. J., M. C. 105, 106.

(*y*) 1 Str. 261; *Taylor v. Clemson*, 11 Cl. & Fin. 610, 642; *R. v. Preston*, 12 Q. B. 825; *Ex parte Rice Jones*, *suprà*; *R. v. Ward*, 3 Cox, C. C. 279; *R. v. Clarke*, 6 Q. B. 349; *R. v. Whittles*, 13 Q. B. 248; *R. v. Shaw*, 13 W. R. 692, *post*, p. 97; and see 11 & 12 Vict. c. 43, s. 13.

(*z*) *R. v. Venables*, 2 Ld. Raym. 1405; 8 Mod. 378; 1 Str. 640; Sess. Cas. 210; and see *R. v. Allington*, 1 Str. 678; *R. v. Austin*, 8 Mod. 309. The fact of defendant having been summoned is stated in the forms of orders given in the schedule (K) to 11 & 12 Vict. c. 43, and see *Labalmondiere v. Frost*, 1 El. & El. 527; 28 L. J., M. C. 155.

have deceived or misled the defendant, the hearing may be adjourned (a).

Where an information had been laid for an assault and a summons thereon had been served on the defendant, but before the day of hearing the informant gave the defendant notice that the summons was withdrawn, it was held that the magistrates were justified in dismissing the information and granting to the defendant a certificate of dismissal under 9 Geo. 4, c. 31 (b). Where two informations were laid against a defendant, one for the rescue of a person arrested by a police officer, and the other for an assault committed on the police officer in making the rescue, the withdrawal of the information for the rescue was held not to operate as a withdrawal of the one for the assault (c).

Withdrawal of summons.

#### SECT. 4.—*Of the Apprehension, Appearance or Default.*

1. <i>Apprehension of Offender to answer</i> .....	89	6. <i>Adjournment on account of variance</i> .....	95
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For offences merely arising by penal statutes, and not connected with any breach of the peace, a justice had no authority, as necessarily incident to the cognizance of the offence, to apprehend the accused in the first instance, or even after a summons and default, but could only summon him to attend, and in default of his appearance proceed *ex parte*. In some cases, however, suspected offenders might and still may be apprehended and brought before a magis-

Apprehension of offender to answer.

(a) 11 & 12 Vict. c. 43, s. 1. The cases in which a warrant may issue to enforce an order duly made against a defendant, without further notice or summons, are collected, *ante*, p. 20, n. (k).

(b) *Vaughton v. Bradshaw*, 8 C. B., N. S. 103; 30 L. J., C. P. 93. The

dismissal under such circumstances was also held to be "a hearing" of the case, so as to render the certificate a bar to an action for the assault. See also *R. v. Church-Knowle*, 7 A. & E. 479; and *R. v. Stamper*, 1 Q. B. 119.

(c) *Galliard v. Saxton*, 2 B. & S. 363; 31 L. J., M. C. 123.

trate without warrant or previous summons (*d*). Thus by 24 & 25 Vict. c. 96 (the Criminal Law Consolidation Act), s. 103, any person found (*e*) committing any offence punishable on indictment or on summary conviction by virtue of that act (except the offence of angling in the day-time) may be immediately apprehended without a warrant by any person and forthwith taken, together with such (*f*) property (if any), before some neighbouring justice to be dealt with according to law; and if any credible witness shall prove upon oath before a justice a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or in respect to which any offence punishable on summary conviction by virtue of that act shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized and if in his power is required to apprehend and forthwith to take before a justice the party offering the same together with such property, to be dealt with according to law (*g*). And, in a variety of cases, where there might be reason to suspect, from the nature of the offence, or the probable description of the offender, that the object of the prosecution would be defeated by giving him notice, the legislature had thought proper to arm the magistrate with authority to issue a warrant immediately upon the information (*h*), and this may now be done whenever the magistrate, before whom the information is laid, thinks fit (*i*). In such cases the informa-

(*d*) See *Gelan v. Hall*, 2 H. & N. 379; 27 L. J., M. C. 78.

(*e*) Meaning of "found committing an offence." See *Brown v. Turner*, 13 C. B., N. S. 485; 32 L. C., M. C. 107; *Horley v. Rogers*, 29 Id. 140.

(*f*) *Sic* in the statute.

(*g*) See also 24 & 25 Vict. 97, ss. 61, 62; and as to street musicians, see 27 & 28 Vict. c. 55.

(*h*) As 42 Geo. 3, c. 119, s. 4; 47 Geo. 3, sess. 2, c. 78, s. 146; 50 Geo. 3, c. 41, s. 25, and many others.

(*i*) 11 & 12 Vict. c. 43, s. 2; and see 24 & 25 Vict. c. 96, s. 105.

tion is required to be substantiated upon oath or affirmation of the informant or of some witness or witnesses on his behalf before the warrant is issued (*k*). The oath should be administered in the presence of the magistrate (*l*). Some acts directed the magistrate to cause the defendant to be brought before him, which seemed to imply an authority to use compulsory process (*m*). But even where a statute authorized the issuing a warrant upon complaint, yet, as it was for the non-payment of money, (*i. e.* on the 49 Geo. 3, c. 68, s. 3, which empowers a magistrate on complaint and proof, by oath, of an order of maintenance and non-payment to issue his warrant to apprehend,) it was held to be proper to issue a summons in the first instance to the party charged, to attend and show cause (*n*). And where rates were imposed by a local paving act, and an appeal given to the commissioners, and from them to the sessions, and, in case of refusal or neglect it was declared that it *should be lawful* for any justice, by warrant, to authorize the collector to distrain; it was held, that it was not obligatory on the justices to issue such warrant without a previous summons; and a rule for a mandamus to compel them to do so was discharged with costs (*o*).

(*k*) 11 & 12 Vict. c. 43, s. 10, and see sect. 2; *R. v. Kiddy*, 4 D. & R. 734; 2 D. & R. Mag. Ca. 364. The proceedings by justices under the 11 Geo. 2, c. 19, in order to deliver to a landlord possession of premises vacated by his tenant, need not be founded upon a complaint on oath. *Basten v. Carrew*, 5 D. & R. 558; 4 B. & C. 649; see ante, p. 74.

(*l*) *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Constable*, *Id.* 894, n. (*a*), in which cases a warrant of apprehension to answer a charge of assault having issued upon a deposition taken before the magistrate's clerk, the magistrate himself being absent, the latter was held liable to an action of trespass, (see *R. v. Watts*, 33 L. J., M. C. 63.) It was also held that the warrant should state on the face of it that the information was upon oath. (See *R. v. Tirnan*, 33 L.

J., M. C. 201, warrant under the Extradition Act between Great Britain and the United States, 6 & 7 Vict. c. 76.)

(*m*) As 19 Geo. 2, c. 21, s. 4.

(*n*) *R. v. Martyr*, 13 East, 55.

(*o*) *R. v. JJ. Stafford*, 5 Nev. & M. 94; *S. C.*, nom. *R. v. Hughes*, 3 Adol. & E. 425. The magistrate was formerly justified in refusing to issue a warrant of distress for a rate, when he entertained any reasonable doubt as to the validity of the rate; *R. v. JJ. Middlesex*, 2 Adol. & E. 606; 5 Nev. & M. 126; *R. v. Mirehouse*, 2 Adol. & E. 632; *R. v. Greame*, *Id.* 615; *R. v. Morgan*, *Id.* 618, n.; *R. v. Halls*, 3 Adol. & E. 494; 4 Nev. & Man. 546. But although the Court of Queen's Bench would not grant a mandamus to compel justices to issue a warrant of distress, which might render them

And, indeed, in all cases where a magistrate grants a warrant in the nature of an execution, under the authority of an act of parliament, he is bound first to summon and hear the parties, unless the statute under which he acts clearly dispenses with the summons and hearing (*p*). And even where a statute authorizes justices to grant a warrant, without a previous summons, it was said by Lord *Denman*, in *Rex v. Hughes* (*q*), that they would properly limit the power by saying "we will not issue a distress warrant till we have heard the party." The distinction is between issuing a warrant as a judicial act and as a merely ministerial one. In the former case, that is, wherever cause may be shown against its issuing, a previous summons is necessary (*r*).

A warrant which is granted by a justice, on the certificate of the clerk of the peace, that an indictment has been found against a party for a misdemeanour is regular and valid without any previous summons, being a ministerial act (*s*).

If the defendant, being duly summoned, neglected or refused to appear, still the magistrate (as has been intimated before) could not ordinarily, by his general authority, enforce his appearance by any compulsory means. That power is now supplied by statute enabling the magistrate, upon nonappearance of the party summoned, to issue a warrant for his apprehension, if it be proved by oath or affirmation that the summons was duly served a reasonable time before the time appointed for appearance, and if

liable to an action, yet it would not fail to put them in motion, when they clearly ought to have proceeded; *R. v. Barker*, 6 Adol. & E. 388; and see *ante*, p. 78. And now by 11 & 12 Vict. c. 44, s. 5, no action lies against a justice for issuing a warrant of distress to enforce a poor-rate by reason of any defect in the rate, and by sect. 5 of the same Act, the justice is protected for anything he does in obedience to a rule of Court.

(*p*) *Painter v. Liverpool Gas Company*, 3 Adol. & E. 433; 6 N. & M. 736, *S. C. ante*, p. 81.

(*q*) 3 Adol. & E. 428.

(*r*) See *Hammond v. Bendyshe and another*, 13 Q. B. 869, recognizing the principle of the case of *Painter v. Liverpool Gas Company*; and see *Skingley v. Surridge*, 11 M. & W. 503; and cases, *ante*, p. 20, n. (*k*).

(*s*) *R. v. Stokes*, 5 C. & P. 148; and see 11 & 12 Vict. c. 42, s. 3.



the matter of the information or complaint be substantiated upon oath or affirmation to the satisfaction of the justice (*t*).

The appearance may be by the defendant personally or by his counsel or attorney on his behalf (*u*). Upon non-appearance the hearing may be adjourned until the defendant is apprehended, and when he is apprehended he may be committed to prison under a warrant, or, if the justices think fit, verbally to the custody of the constable or other person who apprehended him, or to such other safe custody as they may deem fit; and he may be ordered to be brought up at a certain time and place before such justices as shall then be there, of which order the complainant or informant is to have due notice. If upon the day, and at the place so appointed, the defendant attend voluntarily in obedience to the summons, or be brought before the justices by virtue of any warrant, and the complainant or informant, having had such notice, do not appear by himself, his counsel or attorney, the justice or justices are to dismiss the complaint or information, unless for some reason they think proper to adjourn the hearing of the same unto some other day, upon such terms as they think fit, in which case they may commit the defendant to prison or discharge him on recognizance, with or without surety or sureties (*x*). If, however, both parties appear, either personally or by their counsel or attorneys, the justices must proceed to hear and determine the complaint or information (*y*).

What is a sufficient appearance.

The warrant for the apprehension of a defendant, that he may answer to an information or complaint, must be under the hands and seals of the justices by whom it is issued, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which it is to be executed, without naming

Form of warrant.

(*t*) 11 & 12 Vict. c. 43, ss. 2, 13.

(*u*) 11 & 12 Vict. c. 43, ss. 12, 13; and see *Bessell v. Wilson*, 1 El. & Bl. 489, 500.

(*x*) Such recognizance may be proceeded upon as under sect. 3 of 11 & 12 Vict. c. 43.

(*y*) 11 & 12 Vict. c. 43, s. 13.

him, or to such constable and all other constables within the county, &c. in which such justices have jurisdiction, or generally to all the constables in such last-mentioned county, &c. After stating shortly the matter of the information or complaint, on which it is founded, and that it has been substantiated upon oath (or proof upon oath has been given of disobedience to the summons)(*z*), it should order the person to whom it is directed to apprehend the defendant and bring him before one or more justices (as the case may require) of the same county, &c. to answer to the said information or complaint, and to be further dealt with according to law. It is not necessary that the warrant should be returnable at any particular time, but it remains in full force until executed (*a*).

Where and  
how executed.

The warrant may be executed by apprehending the defendant at any place within the county, &c. within which the justices issuing the same have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place within seven miles(*b*) of the border of such first-mentioned county, &c. without having the warrant backed; and in all cases where it is directed to all constables or peace officers within such county, &c. any constable, headborough, tithingman, borsholder, or other peace officer, for any parish, township, &c. situate within the limits of the jurisdiction for which the justices shall have acted when they granted the warrant may execute it in like manner as if it had been directed specially to such constable by name and notwithstanding the place in which it is executed is not within the parish, &c. for which he shall be constable, &c. (*c*).

Indorsement  
of.

If the defendant is out of the jurisdiction of the justices issuing the warrant, it may still be executed upon being duly indorsed by a magistrate for the county, &c., where the defendant is(*d*).

(*z*) See *R. v. Tirnan*, 33 L. J., M. C. 201, 209.

(*a*) 11 & 12 Vict. c. 43, s. 3. See forms in Appendix.

(*b*) *Ante*, p. 24.

(*c*) 11 & 12 Vict. c. 43, s. 3.

(*d*) *Id.*; 11 & 12 Vict. c. 42, ss. 11—15; *ante*, p. 24 *et seq.*

No objection can be taken to such warrant for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on behalf of the informant or complainant; but if such variance appear to the justices present and acting at the hearing to be such that the defendant has been thereby deceived or misled, they may adjourn the hearing to a future day, upon such terms as they think fit, and in the meantime may commit the defendant to prison, or discharge him upon his entering into a recognizance with or without surety or sureties conditioned for his appearance at the adjourned hearing (*e*).

Not open to objection.

Adjournment.

Committal.

Discharge.

Where the defendant is thus discharged upon recognizance, and does not afterwards appear at the time and place therein mentioned, the justice by whom it was taken, or any justice then and there present, upon certifying on the back of the recognizance the non-appearance of the defendant, may transmit the same to the clerk of the peace of the county, &c. within which the recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate is to be deemed sufficient *prima facie* evidence of such non-appearance of the defendant (*f*).

Recognizance.

By 11 & 12 Vict. c. 44, s. 2, no action shall be brought for anything done under a warrant issued to procure the appearance of a party, and which shall have been followed by a conviction or order in the same matter, until after the conviction or order has been quashed. If the warrant has not been followed by a conviction or order, yet if a summons were issued previously to such warrant, and the summons was served personally, or by leaving the same for the party with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons (*g*), no action can be main-

Protection of justices issuing the warrant.

(*e*) 11 & 12 Vict. c. 43, s. 3.

(*f*) 11 & 12 Vict. c. 43, s. 3. See forms of warrant of committal, recognizance, and certificate thereon, in the Appendix.

(*g*) The summons spoken of in

this section is the summons to appear before, not after, conviction, and the appearance may be by counsel or attorney. *Bessell v. Wilson*, 1 El. & Bl. 489.

tained against the justice for anything done under the warrant (*h*).

Proceedings  
*ex parte.*

When no power to issue a warrant was given by statute, the magistrate could only proceed to examine and give judgment *ex parte*, which he was then at liberty and bound to do, in the absence of the defendant (*i*). It was not without much doubt and hesitation, that the Court of Queen's Bench recognized the power of justices to proceed in the defendant's absence, even after summons. It seems however not to have been doubted, since the determination of *The Queen v. Simpson*, Trin. 13 An. (*h*), and to have been settled by undisputed practice, that a party, who refused to appear after regular notice, might be convicted in his absence. This method of proceeding is now expressly authorized by statute, if it be proved upon oath or affirmation to the justices then present that the summons was duly served upon the party a reasonable time before the time appointed for his appearance. In such cases the justices may proceed *ex parte* to the hearing of the information or complaint, and may adjudicate thereon as fully as if the party had personally appeared before them in obedience to the summons (*l*).

The non-attendance, however, of the party does not authorize a judgment without a due examination of the facts upon oath, with the same formality as if he were present and made defence (*m*).

(*h*) 11 & 12 Vict. c. 44, s. 2.

(*i*) *R. v. Simpson*, 10 Mod. 341, 378; 1 Str. 44.

(*k*) The case of *The Queen v. Simpson*, 10 Mod. 248, 341, 371, in which the point was first decided, was three times argued; and, upon the two former arguments, the leaning of the Court was strongly against the power to proceed *ex parte*. It may be noticed, that in *Ditton's case*, where two justices had discharged an apprentice, in the absence of the master, who had been bound over to appear,

but made default, it was objected, that they had no such power, the act expressly directing the discharge to be on the master's appearance; but the Court confirmed the order for the discharge, observing, that the act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy. *Ditton's case*, 2 Salk. 490.

(*l*) 11 & 12 Vict. c. 43, ss. 2, 13, 16; 24 & 25 Vict. c. 96, s. 105.

(*m*) *Semble* 10 Mod. 381; and see 11 & 12 Vict. c. 43, ss. 2, 13, 16.

SECT. 5.—*Proceedings after Appearance.*

1. <i>Waiving objection to Summons</i> 97	6. <i>Adjournment</i> ..... 99
2. <i>The hearing, by whom</i> ..... <i>id.</i>	7. <i>Confession</i> ..... 100
3. <i>Proceedings to be public</i> .... <i>id.</i>	8. <i>Denial of Charge</i> ..... 103
4. <i>Right to act as Advocate</i> .... 98	9. <i>Joint Trial</i> ..... 104
5. <i>Defendant requiring Time</i> .. <i>id.</i>	

If the defendant appears, any irregularity in the summons, or even the want of a summons altogether, becomes immaterial (*o*). The objection that a condition precedent to the issuing of the summons has not been performed should at all events in proceedings of a civil nature, such as bastardy, be taken before the merits of the case are entered upon, otherwise the objection will be waived (*p*).

Waiving objection to summons.

The complaint or information must be heard and determined by one or two or more justices, as may be directed by the act of parliament on which it is framed, or such other act as there may be in that behalf, and if there be no such direction then it may be heard and determined by any one justice for the county, &c. where the matter of the information arose (*q*).

The hearing, by whom.

Where justices are exercising a *judicial* authority, as in hearing and determining a case on summary conviction, their proceedings ought not to be private, and they are therefore not warranted in removing a person from the

Proceedings not to be private.

(*o*) *R. v. Johnson*, 1 Str. 261; *R. v. Barret*, 1 Salk. 383; 2 Salk. 428; *R. v. Aiken*, 3 Burr. 1785; *R. v. Stone*, East, 649; *vide ante*, p. 88.

(*p*) *R. v. Berry*, 1 Bell, C. C. 46; 8 L. J., M. C. 86, *diss. Martin*, B.; *R. v. Simmons*, 1 Bell, C. C. 168; 8 L. J., M. C. 183, and see *R. v. Toddard*, 1 G. & D. 654; *R. v. JJ. Barnarvon*, 5 Nev. & M. 364; *R. v. Stone*, 1 East, 638; *R. v. JJ. Vills*, 12 A. & E. 793; *contra* it seems if the proceedings are of a criminal nature, *R. v. Scotton*, 5 Q.

B. 493; 13 L. J., M. C. 58; *R. v. Berry*, *supra*; but where prisoners were arrested on a charge of felony under sect. 10 of 24 & 25 Vict. c. 97 and the charge before the magistrates was one of misdemeanour under sect. 52 of the same statute without a fresh information, an objection on this ground after the merits had been gone into was held to be too late; *Turner and another v. Postmaster General*, 34 L. J., M. C. 10; 5 N. R. 80.

(*q*) 11 & 12 Vict. c. 43, s. 12.

place where they are exercising such authority, unless he interrupts their proceedings (*r*).

The room or place in which they sit to hear and try the information or complaint is to be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them (*s*).

As to right to  
act as an advo-  
cate.

Formerly, no person had a right to act as an advocate before justices, or take part in the proceedings, without their permission (*t*); but now each party may have his case conducted, and the witnesses examined and cross-examined by counsel or attorney on his behalf (*u*).

Defendant  
requiring time  
for his defence.

Upon the defendant's appearance, the substance of the information is stated to him and he is asked if he has any cause to show why he should not be convicted (*x*), or why an order should not be made against him, and thereupon he either prays time, or confesses the charge, or denies it, and makes defence immediately. In the first case, if he pleads not guilty, and requires time for his defence, and to produce his evidence, it is reasonable, and the law seems to require, that the party should be allowed a proper interval for that purpose. Though no express adjudication has occurred to determine this point, it may be inferred from the language of the Court of Queen's Bench in those

(*r*) *Daubney v. Cooper*, 10 B. & C. 237; and see *R. v. J.J. Staffordsh.*, 1 Chit. Rep. 217. But where a magistrate is acting merely in a ministerial capacity, as inquiring into a charge of felony previous to a committal of the party for trial, the magistrate has a discretion as to who shall or shall not be present at the examination, for it may be essential to the ends of public justice, and more especially to prevent any accomplices from escaping, that the examination should be private, and not interrupted by the interference of any person on the part of the prisoner. *Cox v. Coleridge*, 1 B. & C. 37; 2 D. & R. 86; *R. v. Borron*, 3 B. & Ald. 432; 11 & 12 Vict. c. 42, s. 19, see *ante*, p. 20, n. (*k*).

(*s*) 11 & 12 Vict. c. 43, s. 12.

(*t*) *Collier v. Hicks*, 2 B. & Ad. 663.

(*u*) 11 & 12 Vict. c. 43, s. 12; see *Bessell v. Wilson*, 1 El. & Bl. 489. A party may conduct his own case as an advocate without waiving his right to give evidence as a witness. *Cobbett v. Hudson*, 1 El. & Bl. 11, and see "Best on Evidence," p. 250, (3rd ed.)

(*x*) 11 & 12 Vict. c. 43, s. 14. So also before this statute the defendant regularly should have been called upon to plead before the evidence was given, but there was no objection to its having been taken before, if it had been read over to him and he had confessed the charge. *R. v. Hall*, 1 T. R. 320.

cases where a question has arisen upon the effect of the defendant's appearance. Thus, in over-ruling the objection to the want of a previous summons, the Court, in the case of *R. v. Aikin*(y), laid great stress upon the fact, that the defendant, on his appearance, *did not desire further time* to prove his innocence or produce his witnesses. And, upon a later occasion, in which Lord *Kenyon* pronounced a decision to the like effect, his words were, "justice requires that a party should be duly summoned and fully heard; but if he be stated to be present at the time of the proceeding, and to have heard all the witnesses, and not to have *asked for any further time* to bring forward his defence, if he had any, this has at all times been deemed sufficient"(z). But a refusal to adjourn the case for the purpose of the defendant obtaining legal assistance does not go to the jurisdiction of the magistrate, so as to enable the defendant to quash the conviction on *certiorari* for this cause (a).

The hearing may, either upon the application of the defendant, or for any other cause, be adjourned to a subsequent day(b), taking care not to exceed the time, if any be limited by the act, for *making the conviction*(c). But if the limitation refers only to the time within which the offence must be prosecuted (as in 29 Car. 2, c. 7, and many other acts), and not (as in the former Game Acts, 22 & 23 Car. 2, c. 25; 5 Ann. c. 14) to the time of making the conviction, then, provided the information has been laid in due time, the hearing and subsequent proceedings to judgment will be valid, though postponed to a term beyond the period mentioned in the act(d).

The adjournment may be made before or during the hearing, and may be ordered by any one justice or by the

Adjournment  
and remand.

(y) 3 Burr. 1786; see per *Crompton, J.* in *Turner and another v. Postmaster General*, 34 L. J., M. C. 13.

(z) *R. v. Stone*, 1 East, 639; *R. v. Clarke*, 6 Q. B. 349.

(a) *R. v. Biggins*, 5 L. T., N. S. 605.

(b) 11 & 12 Vict. c. 43, s. 16.

(c) *R. v. Tolley*, 3 East, 467; see *Davis v. Capper*, 10 B. & C. 28; *R. v. Bellamy*, 2 Dowl. & R. 727; 1 D. & R. Mag. Ca. 376; 1 B. & C. 500; and *ante*, p. 50.

(d) *R. v. Barrett*, 1 Salk. 383.

justices present, in their discretion (*e*). The time and place to which the hearing is adjourned should be appointed at the time of the adjournment, and stated in the presence and hearing of the party or parties, or their attornies or agents, then present (*f*). In the meantime the defendant may be allowed to go at large, or may be discharged upon entering into a recognizance with or without surety or sureties, conditioned for his appearance (*g*), or may be committed for safe custody (*h*). Where a statute required justices to proceed immediately to conviction or acquittal and did not in express terms authorize the remand of the defendant, it was yet held that the magistrate had power, under 11 & 12 Vict. c. 43, s. 16, to adjourn the case, and to issue a warrant for his committal to the house of correction for safe custody (*i*).

If at the time or place to which such hearing or further hearing has been adjourned either or both of the parties do not appear personally or by their counsel or attornies, the justices may proceed to such hearing or further hearing as if the parties were present ; or if the prosecutor does not appear, the information may be dismissed with or without costs, as the justices may think fit (*k*).

#### Confession.

If the charge be *confessed*, nothing more remains for the magistrate but to pass judgment, and impose the penalty. It had been determined, that though a statute only empowered the justice to convict upon the oath of one or more witnesses, this implied a power to convict upon the confession of the party alone (*l*). Even if that decision had not

(*e*) 11 & 12 Vict. c. 43, s. 16. This power is given to one justice, because only one justice may happen to be present when the parties attend, and the statute on which the information is founded may require that the hearing shall be by two justices.

(*f*) Where a coroner proceeding by inquisition adjourns his Court to a day named, and neglects to hold the Court on that day, the proceedings cannot afterwards be resumed ;

*R. v. Coroner of Dover*, 34 L. J., Q. B. 59.

(*g*) The same proviso is enacted with regard to this recognizance, as to the one taken under sect. 3 of 11 & 12 Vict. c. 43.

(*h*) 11 & 12 Vict. c. 43, s. 16.

(*i*) *Gelen v. Hall*, 2 H. & N. 379 ; 27 L. J., M. C. 78.

(*k*) 11 & 12 Vict. c. 43, s. 16.

(*l*) *R. v. Gage*, 1 Str. 546. In this case, however, which was upon 5 Ann. c. 14, for using a greyhound,



occurred to determine the law upon this point, it seemed scarcely to admit of much doubt, except what might arise from the express mention made in several acts of parliament of the voluntary confession of the parties, and the distinct provision sometimes introduced that the voluntary confession should be sufficient to convict the party himself, as in the act 21 Jac. 1, c. 27,—a provision which seemed to argue a doubt whether the law would of itself supply that power. It is now expressly enacted, by 11 & 12 Vict. c. 43, s. 14, that if the defendant admit the truth of the information, and show no cause, or no sufficient cause, why he should not be convicted, the justices shall convict him. To be effectual, however, for that purpose, the confession should not only agree with the charge, but should contain an admission of such specific facts as amount to the complete offence complained of; for, as the following authorities show, the confession only admits the charge, but not the legal effect of it:—

In a conviction for trading as a hawker and pedlar without licence, on the former acts against that offence (3 & 4 Ann. c. 4, s. 4; 9 & 10 Will. 3, c. 27, and 8 & 9 Will. 3, c. 25), the information stated, that the defendant was found offering for sale silk handkerchiefs, and trading as a hawker, pedlar and petty chapman: and that he did then and there offer to sell a parcel of silk handkerchiefs, &c. without having a licence. After the appearance of the defendant, it was stated that, being asked for his defence, why he should not be convicted of the said offence so charged in form aforesaid, he freely confessed “that he, the said defendant, did offer to sell silk handkerchiefs to the said *T. P.* (the informer) in manner as is mentioned

Admits only  
the fact, not  
the law.

*Mr. J. Eyre* dissented, because the statute 22 & 23 Car. 2, c. 26, gave power to convict upon confession for the same offence, and therefore he thought there existed no necessity for carrying the act 5 Ann. c. 14, so far. The practice was afterwards established agreeably to that de-

cision, and met with no objection or controversy. See also *Dalt. c. 7, s. 2*; *Allen v. Sparkhall*, 1 B. & A. 100; *R. v. Turner*, 4 B. & A. 510; *Dean v. King*, *Id.* 517; *R. v. Websdell*, 2 B. & C. 136; see 1 Geo. 4, c. 56; 1 & 2 Geo. 4, c. 118; 3 Geo. 4, c. 23.

in the aforesaid information, and that he hath no licence." The conviction was quashed for the insufficiency of the charge, a single act of trading not being deemed sufficient to constitute a hawker and pedlar within the act (*m*): and on it being insisted, that the confession of the defendant cured the defect, by admitting the offence, because, if he had a legal defence, he might have availed himself of it, Lord *Mansfield* would not allow it to have that effect, observing, that the confession is only of the fact that he sold the handkerchiefs to *T. P.*, not that he traded as a hawker and pedlar (*n*).

But in another conviction upon the same statute it was alleged, that the defendant was apprehended for trading as a hawker and pedlar, and was charged upon oath before the justice with having sold a piece of muslin *as a hawker, pedlar and petty chapman*, which fact he confessed: this was held to be sufficient to warrant a conviction for not producing a licence on demand by the justice (*o*).

Confession  
does not extend  
the charge.

The following case is in point to show that a confession cannot extend or help out the description of the offence, as charged in the information. The conviction, which was for killing fish, set forth, as the relation of the informer, that, on the day and place therein mentioned, the defendant did fish in a certain brook there named, and did then and there take and kill the fish, not having a just right or claim to take, kill or carry away any such fish, and the said stream being private property. It was also stated, that another witness, not alleged to be upon oath, came and informed that *R. H.* is the owner of the said stream. The defendant appearing, and being called upon for his defence, "of his own accord confessed all and singular the said premises to be true, in manner as the same are charged in the said information." This conviction was quashed, on the ground that the fact of the ownership, and of the owner's dissent, did not sufficiently appear. It was

(*m*) See the observations upon this case *post*, "Conviction."

(*n*) *R. v. Little*, 1 Burr. 613.

(*o*) *R. v. Smith*, 3 Burr. 1475.

urged, in support of the conviction, that it was warranted by the confession of the whole charge; part of which was that *R. H.* was the owner: but the Court, as to that point, only took notice that as the ownership (or rather, it should be, the owner's dissent) is not sufficiently charged, neither is it confessed: the confession goes no further than the matters charged: the words in the conviction, "not having any just right or claim," are the words of the informer only, and they are too general (*p*).

So, if a fact be penal only under certain circumstances, and those are omitted in the charge, the conviction is bad, notwithstanding it is stated that the defendant fully acknowledged the premises to be true as charged, and did not show any sufficient cause why he should not be convicted thereof (*q*). Nor will such an acknowledgment warrant a judgment upon a statute not applicable to the offence; as a judgment under 17 Geo. 2, c. 5, s. 2, against one as a disorderly person, upon a charge of playing at bowls; that not being one of the things described by that act as constituting a disorderly person (*r*).

The confession would not now appear upon the face of the conviction, but the above cases show the nature of the confession which the justices should require before they convict upon that ground.

As the confession supplies the want of evidence, so it cures any objection to the manner of taking the depositions; such, for instance, as that they were not taken in the presence of the defendant (*s*).

If the defendant appears and denies the charge, or neglects to appear after being duly summoned, the next step is for the prosecutor or complainant to state his case, and to substantiate the information by testimony (*t*). For

Denial of the charge.

(*p*) *R. v. Corden*, 4 Burr. 2279, 2282; see *R. v. Daman*, 2 B. & A. 378; *Wickes v. Clutterbuck*, 3 D. & R. Mag. Ca. 536; 10 J. B. Moore, 63; *R. v. Chaney*, 6 Dowl. 281, 289.

(*q*) *R. v. Clarke*, Cowp. 35.

(*r*) *Id. ib.*

(*s*) *R. v. Hall*, 1 T. R. 320; and see *Mann v. Davers*, 3 B. & Ald. 103.

(*t*) 11 & 12 Vict. c. 43, s. 14.

that purpose, the prosecutor or informer must produce his witnesses to prove the facts alleged.

Joint trial.

Where there are several charges against several defendants, but the evidence against them all is the same, and they are all tried together and each is separately convicted, no objection having been raised at the time, the convictions cannot afterwards be objected to on this ground (*u*).

### SECT. 6.—*Witnesses.*

1. *Compelling attendance of* ..... 104
2. *Competency of* ..... 105

Compelling  
attendance of  
witnesses.

The magistrate had, in general, no authority to compel the attendance of witnesses, for the purpose of a summary trial; unless where it was specially given by act of parliament (*x*).

But every facility is now afforded for procuring their attendance by 11 & 12 Vict. c. 43, s. 7 (*y*). If it is made to appear to any justice, by the oath or affirmation of any credible (*z*) person, that any one within his jurisdiction is likely to give material evidence in behalf of the prosecutor, complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing, such justice is required to issue his summons to such person under his hand and seal, requiring him to appear and to testify what he shall know concerning the matter of the said information or complaint. If the person so summoned neglect to appear, and no just excuse is offered

(*u*) *R. v. Biggins*, 5 L. T., N. S. 605.

(*x*) See 7 Geo. 4, c. 33, s. 20, "Stage Coach Licences;" and many other acts, in which provision is made for the compulsory attendance of witnesses. By usage, which has been sanctioned by the Court of Queen's Bench, the summonses

issued by the Commissioners of Excise are not signed, but have the name of the solicitor of the Excise printed at the bottom; 2 East, 362.

(*y*) As to the mode of enforcing the attendance of witnesses in the cases excepted by sect. 35 of the Act, see 2 Tayl. Ev. sect. 1187.

(*z*) *I. e.* "competent."

for his neglect, a warrant may issue against him, after proof upon oath of the summons having been served upon him personally, or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf. The justice may also issue his warrant in the first instance, instead of a summons, if he is satisfied by evidence upon oath or affirmation that it is probable that the witness will not attend to give evidence without being compelled to do so.

If the witness appear in pursuance of the summons or warrant, and refuse to be examined upon oath or affirmation concerning the matter of the information or complaint, or refuse to take the oath or affirmation, or having taken it refuse to answer such questions concerning the premises as shall then be put to him without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may (after proof on oath or affirmation of service of the summons, and of payment or tender of his reasonable expenses), by warrant commit him to prison for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises (*a*).

It will be observed, that the summons and warrant can issue only against persons who are *at the time of its issuing* within the jurisdiction of the justice; in other cases, the attendance can be enforced only by a subpoena issuing out of the Crown Office. But if when the constable goes to execute the warrant the witness is out of the jurisdiction, the warrant may be backed in the usual way, so that he may be apprehended under it at any place within or out of the jurisdiction (*b*).

From the term generally used in penal statutes, directing the conviction to be upon the testimony of *credible* witnesses (*c*), it might be doubted, whether the magistrate

What witnesses  
admissible.

(*a*) 11 & 12 Vict. c. 43, s. 7.

(*b*) *Id.*; and *ante*, p. 24.

(*c*) As in 24 & 25 Vict. c. 96, ss.  
103—105.

should not be at liberty to examine any witness to whom he might think proper to give credit. But, according to the interpretation put upon the same term in the construction of the Statute of Frauds, 29 Car. 2, c. 3, s. 5, *credible* is equivalent to *competent*; and therefore such witnesses only can be properly received on a summary conviction as are capable of being examined in a Court of justice (*d*). On this account, when pecuniary interests amounted to a disqualification, the informer himself could not, in general, be a witness, whenever he was entitled to the whole, or any share, of the penalty on conviction (*e*), unless he was rendered competent expressly, as by stat. 32 Geo. 3, c. 56, or impliedly by reason of part of the penalty being awarded to the person upon whose oath the offender was convicted, as by 7 Geo. 1, stat. 1, c. 12, ss. 1, 2.

By the policy of several acts of parliament, however, an informer, though interested, might be admitted as a witness, although there was no express provision for that purpose in the statute. For where a statute can receive no execution, unless a party interested be a witness, there he must be allowed, says *Gilbert*, C. B., for the statute must not be rendered ineffectual by the impossibility of proof (*f*). Thus, by 2 Geo. 2, c. 24, s. 8, against bribery at elections, the legislature, in giving an indemnity and discharge to any person offending against the act who shall discover any

(*d*) 2 Jarman on Wills, p. 82 (3rd edit.)

(*e*) *R. v. Tilly*, 1 Str. 316; *R. v. Stone*, 2 Ld. Ray. 1545; *R. v. Blaney*, Andr. 240; *R. v. Piercey*, *Id.* 18; 1 Burr. 422; *R. v. Robotham*, 3 Burr. 1473; *R. v. Cobbold*, Gilb. 111; *R. v. Shipley*, Gilb. 113; *Portman v. Okeden*, Say. 179; *R. v. Blackman*, 1 Esp. 96; 11 & 12 Vict. c. 43, s. 15. If the case of *Jenings v. Hanks*, 3 Mod. 114, 115, be correctly reported, the Court of Queen's Bench had at one time sanctioned the contrary doctrine. According to that report, it was decided that the informer, under a penal statute giving him half the penalty, was a compe-

tent witness. But, besides that the contrary was established by numerous and more recent decisions, the loose manner in which the case is reported may warrant a suspicion of inaccuracy. The same judgment was given in another case, against the opinion of *Herbert*, C. J., by the majority of the judges of the Court of Queen's Bench, who admitted the informer, though entitled to half the penalty, to be a good witness, upon the ground that the justices are the sole judges of the credibility of the witnesses. *R. v. Drake*, 2 Sh. 489, 4th point.

(*f*) Gilb. Ev. 114.

other offender, so that he may be committed, (*g*) must also have intended that he should be competent to give evidence at the trial; and, therefore, in an action for penalties, he was admitted (*h*). So, in a prosecution on 21 Geo. 3, c. 37, against exporting machinery, the informer was held to be competent (*i*). So, on a prosecution for penalties under 9 Anne, c. 14, s. 5, the loser at cards might prove his loss (*j*). And, on a prosecution under the former act of 23 Geo. 2, cc. 1, 3, s. 1 (*k*), for seducing artificers to go out of the kingdom, the prosecutor was held to be a competent witness, although entitled to a moiety (*l*). Also upon a complaint before a magistrate, for the purpose of obtaining an order, the complainant (although interested) was rendered a competent witness (*m*).

The testimony of the informer is now admissible, whatever his interest may be in the result of the information, as witnesses are no longer excluded from giving evidence on the ground of interest (*n*), or on the ground of being parties to the proceedings named on the record (*o*). The party, however, charged with the offence is not competent to give evidence either for or against himself in a criminal proceeding punishable on summary conviction (*p*).

Thus the stat. 14 & 15 Vict. c. 99, by the second section, renders admissible the testimony of parties to proceedings in Courts of justice; but by the third section excepts persons "in any *criminal proceeding* (*q*), charged with the com-

6 & 7 Vict.  
c. 85.

14 & 15 Vict.  
c. 99.  
Parties.

(*g*) See similar provisions in 26 & 27 Vict. c. 113, s. 5; and c. 119, s. 5.

(*h*) Say. 289; Willes, 425; 4 East, 182.

(*i*) 3 Esp. N. P. C. 68.

(*j*) *R. v. Luckup*, Willes, 425 n. (*c*).

(*k*) This act is repealed by 5 Geo. 4, c. 97.

(*l*) *R. v. Johnson*, Willes, 425 n. (*c*). See Phil. Ev. 4th ed. 125; and 2 Stark. Ev. 776.

(*m*) 11 & 12 Vict. c. 43, s. 15.

(*n*) 6 & 7 Vict. c. 85.

(*o*) 14 & 15 Vict. c. 99, s. 2.

(*p*) It appears that, on a joint information, a co-defendant may be discharged from the information, and then give his evidence for or against the remaining defendant. See Taylor, Ev. vol. 2, p. 1156, s. 1223 (4th edit.); see also *Robinson v. Robinson and Lane*, 1 S. & T. 362; 27 L. J., Div. 91.

(*q*) The words "criminal proceeding" override both the exceptions, viz., offences punishable by indictment and on summary conviction.

16 & 17 Vict.  
c. 83.

Husband and  
wife of party.

mission of any indictable offence, or any offence punishable on *summary conviction*." The husbands and wives of parties to the proceedings were also expressly excluded from the operation of this statute. But now by 16 & 17 Vict. c. 83, "on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in any Court of justice or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action, or other proceeding, may be brought or instituted, or opposed or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence on behalf of either or any of the parties to the said suit, action, or other proceeding;" but this is not to render them competent for or against each other in any *criminal proceeding*, or in any proceeding instituted in consequence of adultery, nor are they compellable to disclose any *communication* made by the one to the other during the marriage. A husband or wife, however, is a competent witness against the other at common law, when one is charged with an offence against the other (*r*), but under this exception a wife is not a competent witness against her husband on an information charging him with running away from her and leaving her chargeable to the parish (*s*).

In an information by the Attorney-General, for the penalty of £100, incurred by the defendant, under 8 & 9 Vict. c. 87, s. 51, for unshipping tobacco liable to forfeiture (*t*), the question lately arose in the Court of

tion. *The Attorney-General v. Radloff*, 10 Exch. 84; 18 Jur. 555; 23 L. J., Exch. 240, *S. C.*

(*r*) Tayl. Ev. vol. 2, p. 1166, s. 1236 (4th edit.)

(*s*) *Reeve v. Wood*, 34 L. J., M. C. 15; see *Sweeney v. Spooner*, 3 B. & S. 329; 32 L. J., M. C. 82.

(*t*) By sect. 82, all penalties imposed by that act, or by any act relating to the customs, or to trade or navigation, may be recovered by action of debt, or information in the superior courts, or information before two justices of the peace.



Defendant in a  
"criminal  
proceeding."

Exchequer (*u*), whether the defendant was a competent witness on his own behalf under 14 & 15 Vict. c. 99, and this, as it was agreed by the learned judges, depended upon another question, viz., whether it was "a criminal proceeding," in which the defendant was "charged with the commission of an offence punishable on summary conviction." *Pollock*, C. B., and *Parke*, B., held the testimony of the defendant to be inadmissible; *Platt*, B., and *Martin*, B., held it to be admissible. Mr. Baron *Parke* said, "an information by the Attorney-General for an offence against the revenue laws is a criminal proceeding—it is a proceeding instituted by the Crown for the punishment of a crime—it is a crime and an injury to the public to disobey statute revenue law; and accordingly the old form of proclamation made before the trial of information for such offences styles these offences misdemeanours." Mr. Baron *Platt* rested his judgment upon the ground that the primary object of the information was to recover the pecuniary penalty, and not at once to affect the defendant personally by the imprisonment of his body.

Since the above decision it has been expressly enacted by stat. 18 & 19 Vict. c. 96, s. 36, that the second section of 14 & 15 Vict. c. 99 shall not be deemed to apply to any prosecution, suit, or other proceedings, in respect of any offence or for the recovery of any penalties or forfeitures under any law then or thereafter to be made relating to the Customs or Inland Revenue. In such cases, therefore, the defendant is not a competent witness.

The same question had arisen as to what is "a criminal matter," under the Habeas Corpus and other Acts (*x*), and

(*u*) *The Attorney-General v. Radcliff*, *supra*; and see the numerous cases cited there; see also *Attorney-General v. Sillem (the Alexandra)*, 32 L. J., Exch. pp. 92, 101. In informations for penalties in the Exchequer, evidence as to character is inadmissible. *The Attorney-General v. Bowman*, 2 B. & P. 532, (a).

(*x*) *Ex parte Beeching*, 4 B. & C. 136; *Attorney-General v. Siddon*, 1 Cr. & Jer. 220—226, where Bayley, B., distinguishes between criminal and penal proceedings; *Huntley v. Luscombe*, 2 B. & P. 530; *Rackham v. Bluck*, 9 Q. B. 691; *Cobbett v. Slowman*, 9 Exch. 633; *Ex parte Eggington*, 2 El. & Bl. 717.

the same test had been suggested on several of those occasions as that which was applied by Mr. Baron *Platt*, in the above case, namely, whether imprisonment would follow the conviction in the first instance, or whether a pecuniary penalty would be the proximate result. Thus, a person who had been sentenced by two justices to imprisonment with hard labour under the Smuggling Act, 4 & 5 Will. 4, c. 13, s. 2, was held to be in execution in a criminal matter, and it was therefore decided that a habeas corpus to bring up his body should issue from the Crown office, and not from the civil side of the Court of Queen's Bench (*y*). Lord *Denman*, in that case, said,—“This must be called a criminal matter; the party is sentenced to imprisonment with hard labour, which puts the point beyond doubt.” On an information under the stat. 1 & 2 Will. 4, c. 32, for taking game without having a certificate, the defendant is not a competent witness (*z*). This was so decided on the ground, that looking at the sections bearing on the question (*a*), it was apparent that the legislature had intended to make the offence a crime. Lord *Campbell* said,—“We are not to be guided by any estimate we may form of the moral guilt of a person charged with the offence, but we are to see how it has been treated by the legislature; and I am of opinion, that when we refer to the Act, we find that the offence for which the defendant has been convicted was meant to be a criminal offence, and it is also an offence punishable on summary conviction . . . This is not like a case arising under the bastardy laws, where a mother proceeds against a putative father not

(*y*) *Easton's case*, 12 A. & E. 645. The stat. 4 & 5 Will. 4, c. 13, s. 1, repealed so much of an act as imposed a pecuniary penalty, and, by sect. 2, substituted imprisonment with hard labour.

(*z*) *Cattell v. Ireson*, E. B. & E. 91; 27 L. J., M. C. 167; and see *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213, 214;

and *Hearne v. Garton*, 2 E. & E. 66; 28 L. J., M. C. 216.

(*a*) Sect. 23. The defendant on conviction was to forfeit and pay for every such offence such sum of money not exceeding 5*l.*, as to the justices should seem meet; and by s. 38, the justices might adjudge that in default of payment he should be imprisoned with or without hard labour.

with a view to punish him, but to compel him to pay towards the support of her bastard child; nor is it like a fiscal proceeding to compel a person to pay for a breach of the revenue laws; nor is it like a proceeding before a magistrate in support of a civil right or to recover compensation for anything which has been done." Mr. Justice *Erle* said,—“There is one thing which is strongly indicative that this is a crime, and that is, that upon conviction the offender may be ordered to pay a fine, and that in default of payment he may be imprisoned with hard labour; that punishment is one which is appropriate to a proceeding for a crime and not to any civil proceeding, and the whole tenor of the statute is to protect property in game by making offences against it criminal. By this statute game is made, to some extent, the subject of property; and it would be quite in consistency with the provisions of the statute, that persons who meant to violate that which the statute intended to be property should be prevented from doing so by something in the nature of a criminal proceeding, and I think so the more from the power which is given by sect. 31 in respect of a trespasser, who if found in pursuit of game may be apprehended if he refuse to give his name, which power is never given in respect of any civil proceeding.”

In a still later case, it was held that on a proceeding under 9 Geo. 4, c. 61, s. 21, against an alehouse keeper for unlawfully and knowingly permitting persons of notoriously bad character to assemble together in his house against the tenor of his licence, the alehouse keeper is not a competent witness (*b*). *Wightman, J.*, said,—“The 21st sect. of 9 Geo. 4, c. 61, treats it as a criminal offence, for it says that every person licensed under this Act who shall be convicted before two justices . . . of any offence against the tenor of the licence to him granted shall, unless” &c. “be adjudged by such justices to be guilty

(*b*) *Parker v. Green*, 2 B. & S. 299; 31 L. J., M. C. 133.

of a first offence against the provisions of this Act relative to the maintenance of good order and rule, and the punishment is to be by fine. In the latter part of the section, in the case of a third offence, power is given to the quarter sessions to punish such offender by a fine not exceeding the sum of £100, treating it as a punishment for the offence against the provision relative to the maintenance of good order and rule. It is clear, therefore, that the act charged in this information is an offence." And Mr. Justice *Crompton* added,—“This Act treats the fine as a punishment for an offence against public order and rule; and when I find that the offender is to be dealt with according to the magnitude of the offence, I can have no doubt that this is not a civil, but a criminal proceeding. If the offender does not pay the fine, and if there is no sufficient distress, he is to be imprisoned; but if the only punishment was by way of fine I should be of the same opinion, and that this cannot by any straining of the words be made a civil proceeding” (a).

The question, therefore, what is a “criminal proceeding,” as the subject of summary conviction, depends on the manner in which the legislature have treated the cause of complaint, and for this purpose the scope and object of the statute, as well as the language of its particular enactments, should be considered. It may be, as a general rule, that every proceeding before a magistrate, where he has power to *convict*, in contradistinction to his power of making an order, is a criminal proceeding, whether the magistrate be authorized, in the first instance, to direct payment of a sum of money as a penalty, or at once to adjudge the defendant to be imprisoned; and it must be borne in mind, that where a statute orders, enjoins or prohibits an

(a) A similar question arises upon 17 & 18 Vict. c. 83, s. 27, which enacts that “every instrument liable to stamp duty shall be admitted in evidence in any

*criminal proceeding*, although it may not have the stamp required by law impressed thereon or affixed thereto.”

act, every disobedience is punishable at common law by indictment; in such cases, the addition of a penalty, to be recovered by summary conviction, can hardly prevent the proceeding in respect of the offence from being a criminal one.

In bastardy cases, it is the practice (and correctly so) to examine the defendant (c), and there can be no doubt that he is a competent witness in all matters before magistrates which result simply in *an order for the payment of money*.

### SECT. 7.—*Of the Mode of Examination.*

Although no mode of examination is pointed out by the statutes giving jurisdiction over the offence; yet, as justice requires that the accused should be confronted with the witnesses against him, and have an opportunity of cross-examination, it is required by law, in the summary mode of trial now under consideration, that the evidence and depositions should be taken in the presence of the defendant, when he appears (d); for though the legislature, by a summary mode of inquiry, intended to substitute a more expeditious process for the common law method of trial, it could not intend to dispense with the rules of justice, so far as they are compatible with the method adopted. Indeed, it may be useful upon this occasion to notice the general maxim which has been laid down as a guide to the conduct of magistrates in regulating all their summary proceedings, viz. that “*acts of parliament, in what they are silent, are best expounded according to the use and reason of the common law*” (e). Unless, therefore, the defendant forfeits his advantage by his wilful absence, he ought to be called

Witness examined in presence of the party.

(c) See *R. v. Lightfoot*, 6 E. & B. 22; 25 L. J., M. C. 115; *R. v. Merry*, 1 Bell, C. C. 95; 28 L. J., C. 86, 89. See per *Crompton, J.*, *Parker v. Green*, 2 B. & S. 299;

31 L. J., M. C. 133, 134; and *Cattell v. Irson*, *ante*, p. 110.

(d) See 11 & 12 Vict. c. 43, ss. 12, 14.

(e) Per *Parlier, C. J.*, *R. v. Simpson*, 1 Str. 45.

upon to plead before any evidence is given (*f*); and the witnesses must be sworn and examined in his presence (*g*); or if the evidence has been taken down in his absence, and is read over to him afterwards, the witnesses must at the same time (unless the defendant upon hearing the evidence should confess the fact (*h*)) be re-sworn in his presence, and not merely called upon to assert the truth of their former testimony (*i*); for the intent of the rule is, that the witnesses should be subjected to the examination of the defendant upon their oaths (*k*).

Upon oath.

The examination of witnesses must be upon oath or affirmation, and no legal conviction can be founded upon any testimony not so taken (*l*). There is a difference in the manner in which particular acts are worded, in regard to the mode of examination to be pursued. For, while some acts expressly mention the testimony of witnesses *on oath*, others in general terms authorize the magistrate *to hear and determine*, or to convict or give judgment *on the examination of witnesses*, without noticing the oath. But such general expressions seem, in legal construction, necessarily to refer to the only kind of testimony known to the law,

(*f*) 1 T. R. 320. This course is now prescribed by stat. 11 & 12 Vict. c. 43, s. 14.

(*g*) *R. v. Vipont*, 2 Burr. 1163; *Fletcher v. Calthrop*, 6 Q. B. 880; 14 L. J. (N. S.) M. C. 49, 53, n. S. C.; *R. v. Totnes*, 7 Q. B. 690; *Re Tordoff*, 5 Q. B. 933, 939; *Ex parte Monkleigh*, 17 L. J. (N. S.) M. C. 78; *Coster v. Wilson*, 3 M. & W. 411; *Williams v. Wilcox*, 8 A. & E. 314.

(*h*) *R. v. Hall*, 1 T. R. 320.

(*i*) *R. v. Crouther*, 1 T. R. 125.

(*k*) 2 Burr. 1163. When the preliminary proceedings appeared on the face of the conviction, it was necessary to state that the evidence was taken in the presence of the prisoner, if he appeared; but, (at all events before the form of conviction was prescribed by 3 Geo. 4, c. 23,) whenever the appearance was stated to have taken place on the

same day as that on which the evidence was given, the presumption was, that the evidence was given in his presence, even although the appearance was stated to have been at one place and the depositions appeared to have been taken at another. This presumption, however, might be rebutted by anything appearing on the proceedings inconsistent with it. *R. v. Vipont*, 2 Burr. 1163; *R. v. Swallow*, 8 T. R. 286; and see *R. v. Baker*, 2 Stra. 1240; *R. v. Aiken*, 3 Burr. 1785; *R. v. Kempson*, Cowp. 241; *R. v. Thompson*, 2 T. R. 18; *R. v. Lovet*, 7 Id. 152; *R. v. Crisp*, 7 East, 389, 3rd resolution; *R. v. Pearse*, 9 Id. 358.

(*l*) 11 & 12 Vict. c. 43, s. 15; and this was so before the statute. *R. v. Lewis*, 1 D. & L. 822; *Re Gray*, 2 Id. 539; *R. v. J.J. Buck*, 14 L. J. (N. S.) M. C. 45.

viz. that upon oath. "For," says *Dalton*, "in all cases wheresoever any man is authorized to examine witnesses, such examination shall be taken and construed to be as the law will, *i. e.* upon oath" (*m*). This was the opinion of Lord C. J. *Broke* and Mr. *Lambert*; and the latter, adds the latter, because, in these cases of conviction by justices of the peace, the trial dependeth wholly upon these examinations (*n*). And even before the recent statute, 11 & 12 Vict. c. 43, the practice always was to examine the witnesses upon oath.

The power of justices to administer an oath, by virtue of that jurisdiction which is conveyed in the authority to hear, examine and convict, without any express mention of a power to administer an oath, does not seem, from anything now extant, to have been ever questioned, so as to be brought to a judicial decision. But, in order, as it should seem, to remove any scruples with regard to that point, the statute 15 Geo. 3, c. 39, was passed, which, reciting, "that it is frequently necessary for justices of the peace to administer oaths or affirmations, where penalties are to be levied, or distresses to be made, in pursuance of acts of parliament, which they have no power to administer, unless authorized so to do by such acts respectively," enacts, "that where any penalty is directed to be levied, or distress to be made, by any act of parliament now in force, or hereafter to be made, it shall and may be lawful for any justice or justices acting under the authority of such acts respectively, and he and they is and are hereby authorized and empowered to administer an oath or oaths, affirmation or affirmations, to any person or persons, for the levying of such penalties, or making such distresses respectively."

If, as Dr. *Burn* thinks (*o*), the preamble of this act ex-

(*m*) Dalt. c. 6, s. 6.

(*n*) *Id.* c. 115, c. 164; Plow. 12; Lamb. 517, and see *Ex parte Aldridge*, 4 D. & R. 83; 2 D. & R. 149; Ca. 120; 2 B. & C. 600, S. C.;

*Wilkins v. Wright*, 3 C. & M. 191; *Atcheson v. Everitt*, Cowp. 382; *In re Gellibrand*, 1 D. & R. 121; and *R. v. Picton*, 2 East, 195.

(*o*) 3 Chitty's *Burn's Justice*, tit. "Oaths."

tended to all cases in which there was not an express power given to the justices to administer an oath, the effect of it was to declare illegal the greater part of the convictions which had taken place at any period before its enactment. But a more serious consideration which arose out of the act was, that though the preamble contained a general declaration of the want of any general authority to administer oaths in execution of penal statutes, yet it fell short in supplying that authority in all cases where it might be wanted; for the remedial part was strictly confined to cases of *pecuniary* penalty, and no provision was made for those in which the punishment was merely *corporeal*. Cases of that description therefore (*p*), as Dr. *Burn* has suggested (*q*), were left exposed to great doubt and uncertainty, if any weight was to be given to the law as legislatively propounded by that act. No such doubt, however, appears to have been stirred, and no attempt was made to invalidate the authority constantly exercised by magistrates in such cases: though the question might have arisen in a prosecution for perjury, alleged to be committed in a deposition so taken, relating to an offence against an act which did not specially authorize the administering an oath, and for which the punishment was only corporeal. And now, by 11 & 12 Vict. c. 43, s. 15, it is expressly enacted, that in all cases the witnesses must be examined upon oath or affirmation, and the justices before whom they shall appear for the purpose of being examined have full power to administer the usual oath or affirmation (*r*).

The oath must be administered to each witness *before* he is examined; and administering it afterwards is irre-

(*p*) For instance, on the former statute of 1 Geo. 1, s. 2, c. 43, for destroying trees, where the punishment (which was extended to several subsequent acts, 6 Geo. 1, c. 16, s. 2, and 29 Geo. 2, c. 36, s. 8) was three months' imprisonment and whipping, without any pecuniary

penalty; none of these statutes made mention of an oath, but only empowered justices to hear and finally determine and adjudge.

(*q*) 3 Chitty's *Burn's Just. tit. "Oath."*

(*r*) See also 14 & 15 Vict. c. 99, s. 16.



gular; for the witness ought to be under the sanction of an oath the whole time he is giving his evidence (*s*).

It is the duty of the justice to take the examination of the witnesses formally in writing; mere memoranda, or such minutes as might satisfy the judgment of the justice at the moment, were held not to be sufficient, when by Geo. 4, c. 23, the magistrate was bound to set out the evidence on the record of conviction as nearly as possible in the words used by the witnesses; and if he neglected to do, a mandamus lay to compel him to comply with the requisites of that statute (*t*). If, therefore, the justice had neglected to take minutes of the evidence in a regular and formal manner, he was placed in considerable difficulty in obeying a mandamus under that statute. In one case, when it was suggested by counsel that it was not usual for justices to take down the evidence of the witnesses in formal manner, the Court said, it was the duty of the justices to take minutes of the evidence in order that, if called upon, they should be enabled to set it forth with accuracy (*u*).

Examination  
in writing.

Although the evidence no longer appears on the face of the conviction it should still be taken down carefully in writing, for the assistance and protection of magistrates, in the event of ulterior proceedings being adopted in respect of their adjudication.

The magistrate who convicts must have heard the evidence, and not allow it to be taken in his absence by his clerk, or any other person (*x*).

In presence of  
magistrate.

(*s*) *R. v. Kiddy*, 4 D. & R. 734; D. & R. Mag. Cas. 364; *R. v. Lossop*, 4 B. & A. 616.

(*t*) *In re Rix*, 4 D. & R. 352; 2 D. & R. Mag. Ca. 249; *R. v. Marsh*, D. & R. 260; 2 D. & R. Mag. Ca. 182.

(*u*) *R. v. Warnford*, 5 D. & R.

489; 2 D. & R. Mag. Ca. 511.

(*x*) *R. v. Inhabitants of Darton*, 12 A. & E. 78. The word "quashed" at p. 79 should be "confirmed." See *S. C.*, 3 P. & D. 483; *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Watts*, 33 L. J., M. C. 63.

SECT. 8.—*Of the Proofs necessary to support the Charge.*

1. <i>Of Fact within Jurisdiction</i> ...	118	5. <i>Offence in Information</i> .....	125
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Of what facts  
proof must be  
given.

The evidence must support the charge by proof of every material fact, assigning a specific *date* and *place* to the offence. The degree of evidence, and the credit due to the witnesses, provided it be legally admissible, is exclusively for the judgment of the magistrates(*y*); and the reason formerly for requiring it to be set out in the conviction, was not to canvass their conclusion, but to ascertain that the premises upon which they had proceeded were legal. Many of the following cases were decided upon objections to the evidence, as stated on the face of the conviction, where, as a general rule, it does not now appear, but they are still useful as showing the evidence which should be required by magistrates in order to justify a conviction.

Of fact within  
jurisdiction.

First, the fact proved must appear to be within the jurisdiction of the convicting magistrate. Thus, a conviction, before the Lord Mayor of London for selling coals short of measure, contrary to 16 & 17 Car. 2, c. 2, was quashed, because it was not proved that the coals were sold in London, or the liberties thereof; without which the Lord Mayor has no jurisdiction(*z*).

Variance as to  
place.

Any variance between the information and the evidence adduced in support thereof, as to the parish or township in which the offence is alleged to have been committed, is not to be deemed material, provided it be proved to have been committed within the jurisdiction of the justices hearing the information(*a*).

(*y*) *Ex parte Aldridge*, 4 D. & R. 83; 2 D. & R. Mag. Ca. 120; *Re Geswood*, 2 El. & Bl. 952; *Re JJ. Bristol*, 3 Ell. & B. 479, n. (*a*); 18 Jur. 426; *post*, p. 126.

(*z*) *R. v. Highmore*, 2 Ld. Raym.

1220; and see *R. v. Jeffries*, 1 T. R. 241.

(*a*) 11 & 12 Vict. c. 43, s. 9. *Ante*, p. 77, as to adjourning the hearing, when the variance is such as to mislead the defendant.

The evidence ought also to fix a certain date to the offence in respect of *time*. When the information appeared on the face of the conviction, it was necessary, in order to support the conviction, that the offence should have been shown to have been committed on a day or time prior to the information, and this not merely by implication, but positively, otherwise the conviction was imperfect (*b*).

Time of offence.

As a certain time is usually limited by statute for a summary prosecution before justices of the peace, it was necessary, on that account also, to fix the offence to a certain date, in order that the proceeding might appear to be within the prescribed period; for if that was not shown, either by positive proof of the day, or by express reference in the evidence to a date previously mentioned, the conviction could not be supported (*c*). It was sufficient, however, to refer to a date already mentioned and ascertained (*d*).

It was held sufficiently certain to charge in the information, that the offence was committed *between* such a day and such a day; and there is one authority, here subjoined, for admitting the same latitude in the *evidence*:—

This was a conviction for deer-stealing (*e*). According to the record of conviction which remains filed in the Crown Office, the evidence (which is in the same words as the information) states the killing, “*inter ultimum diem Julii et sextum diem Augusti, et inter duodecim menses ante informationem*.”—the judgment is, “*quod convictus sit de præmissis*.” To the objection for want of certainty in the proof, it was answered, that it was next to impossible for the witness to be able to swear to every day, and it is not to be intended that there were more deer stolen than

(*b*) See *R. v. Fuller*, 1 Ld. Raym. & S. 534.  
510.

(*d*) *R. v. Crisp*, 7 East, 390.

(*c*) See *R. v. Woodcock*, 7 East, 146; and *Cathcart v. Hardy*, 2 M. 248.  
(*e*) *R. v. Hugo Simpson*, 10 Mod.

one; and, moreover, *Eyre, J.*, said, "That it had been sufficiently settled in *Chandler's case* (*f*) to be well enough."

It should not, however, pass unobserved, that such uncertainty is open to more serious objections in the conviction, than where it is confined to the information, nor does it seem defensible by the same reasons. And it may be suggested, that, as the admissibility of this loose mode of proof, contrary to analogy and principle, rests upon one, or at most upon two instances, a prudent magistrate might hesitate to convict, without testimony of a more precise date. By 11 & 12 Vict. c. 43, s. 9, a variance between the information and the evidence, as to the time of committing the offence, is not to be deemed material, if it be proved that the information was in fact laid within the time limited by law for laying the same (*g*).

Variance as to time.

Where the facts constituting an offence are all of a positive nature, there can be no doubt that they must be established in proof by the prosecutor, before any judgment of conviction can be pronounced, unless the statute which creates the offence expressly exempts the prosecutor from doing so. In some few instances this is the case; for example, by 26 Vict. c. 10, it is provided, that where an information is laid for entering salmon for exportation in contraven-

Evidence of facts constituting the offence.

(*f*) 14 East, 267. It does not, however, appear, by the reports of that case, that the objection was to the evidence; it is only said to have been so charged in the information. It may be observed, that the mention of a precise day is less material in the information; because, even if stated, the informer is not tied up to that day; 1 Salk. 369; 2 Ld. Ray. 582; 11 & 12 Vict. c. 43, s. 9. Nor will the generality of the charge embarrass the party in his defence, so long as the fact must, in proof, be fixed for a certain day; for, if not prepared immediately with evidence applicable to that particular

day, he may require time to adduce it, which the magistrate would be bound to grant. But, on the other hand, if the same vague and uncertain description is admitted in evidence, it is manifest the defendant cannot have the benefit of proving his innocence, without being driven to the hardship of accounting for every day within the time specified; which, as the interval chosen may be of indefinite latitude, might be very difficult for him to do.

(*g*) See *ante*, p. 77, as to adjourning the hearing when the variance is such as to mislead the defendant.

tion of the Act, it shall lie on the defendant to prove that the entry was not in contravention of it; and by 25 & 26 Vict. c. 64, where a person is charged with having marked naval stores, knowing them to be so marked, if he be a marine-store dealer or employed in her majesty's yards, he shall be assumed to have such knowledge unless he proves the contrary; and under 27 & 28 Vict. c. 37 (as to chimney sweeps), when the age of the child comes in question, proof of the age lies on the defendant.

But with regard to such offences as are made penal only by the want of certain qualifications in the offender, or by the absence of certain exculpatory circumstances, a difficulty sometimes occurred in determining the degree of *negative* proof which ought to be required by the magistrate. This was exemplified most frequently in summary prosecutions on the former game laws; since they attached only upon persons destitute of certain qualifications enumerated in 22 & 23 Car. 2, c. 25, the absence of which was necessary to the jurisdiction of the convicting magistrate. The general rule of law dispenses with proof of a negative, and casts the burden of establishing the exception in the affirmative upon the party seeking to protect himself under it: and that rule was fortified in the case under consideration by the difficulty that existed of ascertaining or proving the want of every qualification introduced into those laws. The duty of magistrates, however, in this particular seemed, by the effect of decided authorities, to be governed by a different rule from that which prevails in trials at common law, and to require the production of some evidence to negative the existence of such exemptions as are incorporated with the offence, or at least to authorize a conclusion of their non-existence. For if it was necessary, as the preponderance of authorities seemed to declare, that the evidence recorded in the conviction (when the evidence appeared therein) should go that length, it seemed to follow, that the magistrate, to be able to make that statement with truth, should have some

Evidence to  
*negative* ex-  
emptions, how  
far necessary.

evidence of it before him. It was considered by Lord *Mansfield* (*h*), as a point fully settled, that it must be made out before the justice, that the party had no such qualification as the law requires; and this, says his lordship, upon good reasons, independent of the authorities (*i*). In that opinion the judges, *Dennison* and *Foster*, fully concurred. To the weight of these authorities is to be added that of the opinion declared by Lord *Kenyon*, and Mr. *J. Grose*, in a case in which the attention of the Court was expressly drawn to the question. The following expressions were used by Lord *Kenyon* on that occasion:—"It is said to be impossible for the prosecutor's witnesses to give negative evidence of the want of qualification in the defendant; but I do not see why it may not be done. A witness may give general evidence of it from his belief; he may know the defendant, and know that to all appearance he may not be a man of substance; evidence may be given of his condition in life, to raise a reasonable presumption against his having any of the necessary qualifications" (*k*). On the other hand, however, two of the learned judges of the Court of Queen's Bench, in the same case (*l*), were of opinion, that the general rule of law, as acted upon in courts of justice, ought to govern the proceedings of justices; and therefore, that no evidence of the want of qualification ought to be required from the prosecutor. That opinion is founded upon the practice in penal actions on the same statute, and upon the inconvenience of requiring positive testimony in support of a negative, which in many instances is of a nature that it is

(*h*) *R. v. Jarvis*, 1 Burr. 153. See also *R. v. Marriott*, 1 Str. 66; *Bluet*, *q. t. v. Needs*, Com. Rep. 525.

(*i*) *Id. ib.* The case of *R. v. Jarvis*, 1 Burr. 148, can scarcely be considered as less than a direct authority upon this point; for though it be true, as stated in *R. v. Stone*, 1 East, 653, that the conviction was defective by the want of the negative allegations

in the *information*, as well as in the *evidence*, yet it is plain, from the two reports of that case in Burrow, and in the note, 1 East, 643, that the opinion of the court was expressed as much with reference to the evidence, as to the *information*.

(*k*) 1 East, 650.

(*l*) Mr. *J. Lawrence* and Mr. *J. Le Blanc*, *R. v. Stone*, 1 East, 653.

almost impossible for a witness to swear to, and must lie almost wholly in the knowledge of the party accused. According to the view of those learned judges, if the affirmative fact, viz. the killing the game, was proved, and the defendant did not prove his qualification, or desire further time to do so, there was enough to warrant the justice in drawing the conclusion of the want of qualification, and in convicting the defendant of the offence charged (*m*). And the opinion of those learned judges was afterwards expressly confirmed by the unanimous decision of the Court of Queen's Bench in *R. v. Turner* (*n*), where it was laid down as a general rule, that the affirmative is to be proved, and not the negative, of any fact which is stated, unless under peculiar circumstances where the general rule does not apply; for where the fact lies peculiarly within the knowledge of one party, it is easy for him to prove it, but often impossible for the other. Therefore, notwithstanding a negative averment must be made by the prosecutor, the affirmative, if it affords a justification to the party charged, must be proved by him as matter of defence. This doctrine was also subsequently recognized by the Court of Queen's Bench in *R. v. Hanson* (*o*), which occurred in Michaelmas term, 1821, and was a conviction by two justices for selling ale without a licence. The question was, whether the informer was bound to give evidence to negative the existence of a licence; and Lord C. J. *Abbott* said, he concurred in all the observations upon which the judgment of the Court was founded in *R. v. Turner*, though he did not mean to say that there might not be cases which might be fit to be considered as exceptions to the general rule; but in the case then before the Court the party would sustain not the slightest inconvenience from the general rule, as he could immediately produce his licence; while, if the case was

(*m*) Per *Lawrence*, J., 1 East, 653.

(*n*) 5 M. & S. 206.

(*o*) This case does not appear to

have been reported, but was given by Mr. Dowling in the 2nd edition of this work, from his MS. notes in p. 45.

taken the other way, there would be considerable difficulty and inconvenience in the proof(*p*). And it is now expressly enacted by 11 & 12 Vict. c. 43, s. 14, that if the information in any case negatives any exemption, exception, proviso, or condition in the statute on which the same is framed, it shall not be necessary for the prosecutor to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same(*q*).

In all cases, and before the passing of this statute, it was an acknowledged distinction that where the exceptions came by way of proviso in a separate clause or act from that which described the offence, and without reference in the enacting clause incorporating them therewith, the defendant must bring himself by proof within the proviso by which he sought to protect himself(*r*). Thus, upon a conviction under the 10 Geo. 2, c. 28, s. 2, for performing plays, without the king's patent or licence from the lord chamberlain: it was held, that it lay on the defendant to show, that he had a licence from the magistrates in sessions, under the 28 Geo. 3, c. 30, if such was the fact(*s*).

Proof of specific quantity, sums, &c.

With regard to the precision necessary in another point, namely, in specifying exact *sums*, or quantities, where they constitute a necessary ingredient in the offence, the fol-

(*p*) *R. v. Clarke*, 8 T. R. 220. The defendant's own representations or admissions afforded a legitimate and strong ground for the conclusion that he did not come within the statutory exemptions, and it was decided that justices, before whom an information was exhibited on the former game laws, were justified in founding the want of the defendant's qualification upon the fact of his having sworn before them acting in another capacity, as commissioners of the income tax to an estate under 100*l.* a year.

(*q*) When the exception, &c. must be negatived in the conviction, see *post*, "Conviction." On a conviction under 11 & 12 Vict. c. 49, which

prohibits the sale of refreshment within certain hours on Sunday, by persons licensed to sell beer, &c., "except to travellers," it seems to have been lately held, that the onus of showing that the persons supplied with refreshment were not travellers, lay on the informer. *Taylor v. Humphries*, 34 L. J., M. C. 1.

(*r*) *Denison, J., R. v. Jarvis*, 1 East, 647, note; and *Lord Kenyon*, 1 East, 650; and *R. v. Bryan*, 2 Str. 1101. *Contrà*, if the exception were in the clause containing the prohibition, or in one thereby referred to. See *R. v. Pratten*, 6 T. R. 559; *Gill v. Scrivens*, 7 Id. 27, and *Taylor v. Humphries*, *suprà*.

(*s*) *R. v. Neville*, 1 B. & Adol. 489.



lowing cases occur as worthy of notice :—It was held to be requisite, in a conviction for not accounting and paying over money collected for tolls under a Turnpike Act, to particularize the sums alleged to be received, and the times of receiving them ; so that the party might be able to defend himself upon a second charge (*t*).

Also, wherever the magistrate is directed to award certain damages, by way of compensation to the party injured, there must be proof of some precise number, or quantity, by which the damage may be measured. Thus, a conviction on 43 Eliz. c. 7, for cutting down lime-trees, was held to be defective, for not alleging the number of trees ; the magistrate being by the statute to assess the *quantum* of damages according to the injury (*u*). So a conviction under a stat. (7 & 8 Geo. 4, c. 30, Malicious Trespass Act) which contained specific enactments and penalties for injuries according to the extent of damage which had been inflicted and rendered the consequences of conviction dependant upon the amount of such damage, was held to be bad for not finding as to the amount of damage (*x*).

When the evidence and the information were set forth in the conviction, it was held, that the evidence must go to establish the identical offence which formed the subject of the information. It was not therefore sufficient that there appeared to be evidence of another offence of the same kind and subject to the same penalty (*y*). No substantial objection, however, can now be taken at the hearing upon the ground of variance between the information and the evidence, but if the justices are of opinion, that the defendant has been thereby misled, they may adjourn the hearing (*z*).

For the purpose of making an order in bastardy upon the putative father, the evidence of the mother must be

Evidence of offence in information.

Corroborative evidence.

(*t*) *R. v. Catherall*, 2 Str. 900.

(*u*) *R. v. Burnaby*, 2 Ld. Ray. 900 ; and see the conviction itself, 3 Ld. Ray. 125.

(*x*) *Charter v. Greame*, 13 Q. B. 216, 236, *post*, "Conviction."

(*y*) *R. v. Smith*, 8 T. R. 588 ; *R. v. Reason*, 6 Id. 375 ; *R. v. Davis*, Id. 178. See *R. v. Harpur*, 1 D. & R. 222 ; 1 D. & R. Mag. Ca. 67.

(*z*) 11 & 12 Vict. c. 43, ss. 1, 9.

corroborated in some material particular by other testimony (*a*).

Degree of evidence a question for the justices.

As to the degree and sufficiency of the evidence, and the credit due to the witnesses, the magistrates alone are the judges. In this respect they are placed in the situation of a jury (*b*); and, therefore, whatever the Court of Queen's Bench, upon an inspection of the proceedings, would deem sufficient to be left to a jury on a trial, when the evidence was set out on the face of the conviction, was considered by them adequate to sustain the conclusion drawn by the convicting magistrates (*c*). Beyond that, the Court would not exercise a judgment upon the credit or weight due to the facts from which the conclusion was drawn. This criterion is accurately illustrated by the following example:—"This was a conviction, on the former statute of 5 Ann. c. 14, for keeping and using a gun, with intent to kill game. The witness deposed that the defendant on the day specified did keep and use a gun with intent to kill game, and that the witness was satisfied the defendant did keep and use the said gun for the purpose aforesaid, from the circumstance of his

Instances.

(*a*) 7 & 8 Vict. c. 101, s. 3. Under s. 2, if the application be made after the lapse of twelve months from the birth of the child, it is necessary to prove payment by the alleged father towards its support within that period, but the evidence of such payment need not be corroborated by other testimony. *Hodges v. Bennett*, 5 H. & N. 625; 29 L. J., M. C. 224; and see *R. v. Berry*, 1 Bell, C. C. 95; 28 L. J., M. C. 86.

(*b*) *R. v. Reason*, 6 T. R. 375; and see *R. v. Bolton*, 1 Q. B. 66. As proceedings before justices, however, are usually of a criminal and penal nature, and as they are substituted for a jury of twelve men, who must, in order to convict, have all been satisfied by the evidence of the criminality of the defendant, the evidence ought to be fully satisfactory and convincing to the mind and conscience of the magistrate before he pronounces the party to have been guilty. If any reason-

able doubt exists in his mind, the party charged is entitled to the benefit of that doubt. Such cases, it is to be recollected, differ very materially indeed from those where mere civil rights are concerned, and where the mere preponderance of evidence may be sufficient to decide the question; 2 Stark. Ev. 414.

(*c*) See *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6. A test is, whether, if the case had been tried at *Nisi Prius*, the judge would have withdrawn the case from the jury; per *Blackburn, J.*, *R. v. Ternan*, 33 L. J., M. C. 216; and as to acting on circumstantial evidence, see *Brown v. Turner*, 13 C. B., N. S. 485; 32 L. J., M. C. 106. The evidence may now be brought before the Court of Quarter Sessions on appeal, and before the Superior Court either by affidavit or by a case stated for the opinion of the Court; see *post*, Part III., Chapters IV. & V.

hearing a gun go off, and observing that it was fired by the defendant, who was then walking about a piece of ground with that apparent intent." It was objected, that neither the keeping nor the using a gun is of itself an offence, without proof of its being used to kill game; and that it was not hinted that it was fired at game in the instance spoken of by the witness. Lord *Kenyon* :— " Here was evidence tending to prove the offence. That being the case, we have no authority to inquire farther, and see whether the conclusion drawn by the magistrate be, or be not, the inevitable conclusion from the evidence. It is sufficient in convictions, if there were such evidence before the magistrate as would be sufficient to be left to the jury. Here, we cannot say there was no evidence of the fact for the consideration of the magistrate" (*d*).

Again; on a conviction for selling to one *Robert Chappel* thirty loaves of bread, which had not been baked twenty-four hours (under the 39 & 40 Geo. 3, c. 74),—the witness, *Mary Chappel*, swore that the loaves were brought to the shop kept by her in the defendant's cart, and by his servant; another witness proved, that a hand-bill had been delivered to him, signifying that a Mr. *Smith* (the defendant's name) had opened a shop at *Chappel's* to sell bread; and the defendant said in his defence, that he had sent the loaves to *Chappel's*, with orders not to sell them till the following day. It was objected, first, that there was no evidence of any sale at all, the witnesses having merely proved, that the bread was brought to *Mary Chappel* in the defendant's cart. Another objection raised by the Court was, that there was no evidence of a sale to *Robert Chappel*, it being rather of a sale to *Mary Chappel*. The Court thought there was no foundation for the first objection: for there was *some evidence*, from which the magistrate might draw the conclusion of a sale by the defendant. But the objection, that it did not appear to be a sale to *Robert Chappel*, they thought de-

(*d*) *R. v. Davis*, 6 T. R. 177; and see *Coster v. Wilson*, 3 M. & W. 411, *per cur.*

cisive; declaring, that if there had been any evidence whatever (however slight) to establish that point, and the magistrate who convicted the defendant had drawn his conclusion from that evidence, they would not have examined the propriety of his conclusion; for the magistrate is the sole judge of the weight of evidence (*e*).

So, in a conviction of the defendant for causing to be acted, at the *Coburg Theatre*, for gain and reward, a certain entertainment of the stage called *Richard the Third*,—the evidence set forth was, that the defendant was seen once or twice at the rehearsals of *Richard*; that another person was stage manager, and that the defendant engaged *I. S.* to perform, and gave him a cheque for the amount of his benefit: it was held, that this was sufficient to warrant the justices in drawing the conclusion, that the defendant caused the play of *Richard the Third* to be performed. *Abbott, C. J.*, said, “As to the objection, that this evidence did not warrant the conviction, it is sufficient to say, that it cannot prevail, unless the evidence stated on the face of the conviction be such as that no reasonable person could draw the conclusion that the defendant caused this particular play to be performed. I am very far from thinking that to be the case. The magistrates might very reasonably draw the conclusion; and, having done so, we cannot overturn their decision as to the fact” (*f*).

The same criterion will be found to be kept in view throughout the ensuing cases, whether the determination of the superior Court has been to confirm, or set aside, the conclusion of the justices. In those in which the Court has declared the evidence insufficient, that judgment may be referred to the want of sufficient legal evidence to have gone to a jury:—

In a conviction for deer-stealing, on 3 & 4 W. & M. c. 10, the evidence stated was, that the justice entered into a glover’s house, and, finding a deer-skin, asked him how he came by it; the glover said he bought it of *I. S.*, who,

(*e*) *R. v. Smith*, 8 T. R. 588.

(*f*) *R. v. Glossop*, 4 B. & A. 616.

not giving a good account of himself, was convicted. This was held sufficient; the Court held, that the justice might convict the person that sold the skin; for the statute would be easily evaded, if the deer-stealer could discharge himself by a sale (*g*).

The following case shows, however, that the Court would so far take notice of the sufficiency of evidence, upon which the conviction was framed, as to set that aside, if they thought the evidence too slight to warrant it. This was a conviction for "*knowingly harbouring, keeping and concealing, and permitting to be knowingly harboured, &c. a quantity of tea, unlawfully imported.*" The evidence stated in the conviction was, that, in a field about a quarter of a mile from the defendant's house, and which field the witnesses swore they believed to be in the defendant's occupation, two of his servants were seen by the witnesses loading the tea in question into a cart with two horses, which one of the witnesses swore were the defendant's. Another witness proved, that, in a conversation with the defendant, he said, "It was unfortunate for him, that his servants had taken his cart and horses without his knowledge." The conviction further set forth, that the defendant, in answer to the charge, declared he knew nothing of his servants having the tea, but did not produce either of the said servants, or any other evidence whatever. Upon this evidence, which was all set out as above, the conviction and judgment followed. The conviction being removed into the Queen's Bench by *certiorari*, a rule was obtained to show cause why it should not be quashed, as to the penalty for *knowingly* harbouring, &c. for want of sufficient evidence as to that part of the offence: to that extent, accordingly, the rule was made absolute (*h*).

So on a conviction on 11 Geo. 1, c. 30, s. 16, for know-

(*g*) *R. v. Jennings*, 1 Salk. 383. The case of possession unaccounted for, is now expressly provided for by 24 & 25 Vict. c. 96, s. 14 (as it formerly was by 7 & 8 Geo. 4, c. 29, s. 27). The above case, however,

though no longer of use as a precedent, may, nevertheless, serve to illustrate the present subject of inquiry. See *R. v. JJ. Oxfordsh.*, 1 M. & S. 446.

(*h*) *R. v. Hale*, Cowp. 728.

Where the Court would judge of the evidence.

ingly harbouring, keeping and concealing three gallons and two quarts of foreign geneva, being run goods, &c. liable to the duties of excise, the conviction having been returned by *certiorari* into the Queen's Bench, for the purpose of being quashed for informality, set forth the evidence upon which the convicting justices acted; from which it appeared, that, search having been made in the dwelling-house of the defendant for run goods, a half-anker of foreign geneva was found concealed in an inner room therein; that the defendant was not in the house when the search was made, but that his wife was present, and also two men, one of whom instantly left the premises upon the appearance of the searching officers; that the defendant, before the convicting justices, in answer to the charge, did not produce any evidence, but insisted that the room, in which the seizure was made, was detached from his dwelling-house, and had a door always left unlocked; whereupon the justices found him guilty of the offence charged in the information. On moving to quash this conviction on two grounds; first, that, on the face of the conviction, there was not sufficient evidence to show that the defendant had any knowledge of the geneva being in his house at the time of the seizure: and, secondly, that there was nothing to show, conclusively, that the spirits seized were run goods,—*Abbott, C. J.*, said: "Upon the whole, we are of opinion, as to the first point, that the evidence set out is too slight to found a conviction. The mere naked fact, of the spirits being found in the defendant's house during his absence, cannot be considered as conclusive (*h*) evidence of knowledge to support a conviction on this statute. There is abundant ground for suspicion, but we cannot say that it is a clear and satisfactory ground to convict. I therefore think, that the justices drew a wrong conclusion." —*Bayley, J.*: "There must be some clear and satisfactory evidence, that the party knowingly harboured,

(*h*) The word "conclusive" is here probably used in the sense of "satisfactory."

or permitted, the spirits to remain in his house." Conviction quashed (i).

In the foregoing cases, the Court probably considered the facts stated as not sufficient to have been left to a jury, on the question of the defendant's knowledge. In another case, where the question was of a similar kind, the facts were as follows:—The offence was under 19 Geo. 3, c. 50, for having, in the defendant's custody and possession, a private still. The evidence recited, that there was found by the witness, under a pig-stye in the garden of the defendant's house, a private still just worked off, a worm-tub, and worm, and six wash backs, containing one hundred and fifty gallons of wash. Among several other objections urged against the conviction, one was, that the evidence did not support the charge of the still being in the custody and possession of the defendant, and that it was not even stated that the garden was in the defendant's possession (k). In consequence of other defects in the conviction, it became unnecessary to determine this objection: but, from what was thrown out by the Court in the course of the argument, their opinion may be collected to have been against the objection; and they intimated, that the circumstance of the articles being found concealed in the defendant's garden, with the appearance of being just worked off, was evidence sufficient for the magistrates (who in these cases, Mr. J. *Grose* observed, are put in the place of a jury) to find the fact, that they were in the defendant's custody and possession. A doubt, however, was suggested by one of the judges (Mr. J. *Le Blanc*), upon the ground that the defendant was not stated to be either in the house, or on the spot, at the time (l). Upon the hearing of an information for an assault, evidence was given, which, if true, showed that

(i) *Ex parte Ransley*, 3 D. & R. 572; 2 D. & R. Mag. Ca. 151; see *Ex parte Smith*, 3 D. & R. 461; 2 D. & R. Mag. Ca. 126.

(k) The counsel, in support of this objection, referred to *R. v. Ab-*

*bott*, Doug. 553, where it was said, in argument, that if goods be found in the party's possession, his knowledge shall be presumed, but not when they are found in his grounds.

(l) *R. v. Chandler*, 14 East, 273.

there had been not only an assault but also a rape committed on the complainant. It was held, however, that the justices had jurisdiction to convict of the assault on the ground that it was their province to decide whether the evidence of the rape was true or not, Mr. Justice *Crompton* saying, "The credibility of the evidence has from the time of Lord *Tenterden* been for the justices to decide upon" (*m*).

It has been held, on a conviction for selling bread under the lawful weight (8 Anne, c. 18, s. 3), that the fact of the servant selling bread in the master's shop is good evidence of its being the master's bread. It is, however, no more than evidence; and the charge against the master must be directly for selling bread; for, where the offence stated was merely, that the servant sold bread in his shop, this was held to be bad, as charging, by way of offence, what was only the evidence of it (*n*).

If the offence is confined to persons of a particular description, there must be competent evidence of their answering that description. Thus, a conviction for trading as a hawker and pedler without a licence (under the former acts of 3 & 4 Anne, c. 4, and 9 & 10 Will. 3, c. 27, s. 8), was held not to be supported by evidence of a single act of selling a parcel of silk handkerchiefs to a particular person; for the bare act of sale, it was held, did not show the defendant to have been such a person as by law is required to take out a licence (*o*). But, on another con-

(*m*) *Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J., M. C. 152. See *Re Thompson*, 6 H. & N. 193; 30 L. J., M. C. 20, n. (3).

(*n*) *R. v. Bradley*, 10 Mod. 156.

(*o*) *R. v. Little*, 1 Burr. 610; see the observations upon this case, *post*, "Conviction." As far as may be collected from a very careless report, the same point seems to have been decided in another case, Loft. 184. See *Allen v. Sparkhall*, 1 B. & A. 100; *R. v. Turner*, 4 B. & A. 510; *Dean v. King*, *Id.* 517; *R. v. Websdell*, 3 D. & R. 360; 2 D. & R. Mag. Ca. 44;

2 B. & C. 136.

In *R. v. Salomons*, 1 T. R. 251, the offence charged was, the keeping an office for the sale of lottery-tickets; viz. the sale of a ticket, No. 34,907, and receiving money for the share in the said ticket, without a licence. It was objected, on the authority of the above case of *R. v. Little*, that the defendant was not described as a person from whom, by the act, a licence could be required; inasmuch as a licence was not necessary for the sale of one ticket only. But the Court gave no opinion on this point.



viction under the same statute (9 & 10 Will. 3, c. 27, s. 8) for trading as a hawker and pedler *without a licence*, evidence of the defendant's refusal to produce a licence on demand was deemed sufficient proof of his not having one, which was the offence he was convicted of (*p*).

Though the general rule was, that no material omission in the evidence, as to the description of the defendant, in those particulars which were necessary to constitute the offence, could be supplied by intendment (*q*); yet, how far that rule might be qualified, in favour of what was necessarily and plainly to be collected from the facts stated, though it was not expressly averred, may be judged from what is laid down in the following case:—

What intendment admitted in evidence.

This was a conviction on the Malt Act, 45 Geo. 3; the offence, which was that of wetting malt, was laid on the *twelfth of May*; and the witness, an excise officer, after stating "that the defendant is a maltster" (which it was agreed must refer to the day of the conviction, and not to the day laid for the offence), went on, "that he surveyed the malt-house of the said defendant on the said *twelfth day of May*, and found a floor of malt in operation." A doubt was suggested, whether the evidence sufficiently showed the defendant to have been a maltster at the time of the offence committed. It was argued for the affirmative, first, that it was sufficiently alleged by reference to the information, the witness having spoken of the *said* defendant, who had been sufficiently described in the information (*r*): the Court, however, did not concur in this argument. It was therefore further contended, that the

(*p*) *R. v. Smith*, 3 Burr. 1475, and note. It has been held, in an action for penalties against an innkeeper, on the Post-Horse Act, that it is not necessary to show the licence itself of the defendant (although it was alleged that he was licensed to let post-horses to hire); but, as against him, it is sufficient evidence that he had written over his door, "licensed to let post-horses;" *Radford v. Briggs*, 3 T. R. 637. By the Game

Act, 1 & 2 Will. 4, c. 32, s. 42, it is not necessary to negative by evidence any certificate, licence, consent, authority or other matter of exception or defence, but the party seeking to avail himself of them must prove the same.

(*q*) *Post*, "Conviction."

(*r*) This was contended upon the alleged authority of *R. v. Tucke*, 2 Ld. Ray. 1386; but the Court denied the authority of that case.

fact of the defendant being a maltster at the time of the offence, viz. *12th of May*, must necessarily be collected from the whole of the evidence; and the majority of the Court were of that opinion. Lord *Ellenborough*:—"If any material fact were wanting in the evidence to make out the charge, I should be very unwilling to supply it by intendment; but, taking the whole evidence together, it does sufficiently appear that the defendant was a maltster at the time of the offence committed. All the difficulty arises from the order in which the evidence was taken down. The witness begins by stating that the defendant *is* a maltster; which would refer to the time he is speaking, the *4th of June*. But, without advertng to that, see how the evidence would stand without it. The witness deposed, that, on the *12th of May* he *surveyed* the *malt-house* of the defendant: now it could not be then the defendant's *malt-house*, nor could the officer then have surveyed it, unless the defendant had entered the *malt-house*, as a *maltster*; it would otherwise have been miscalled the defendant's *malt-house*. The term *survey*, too, is used in *malt acts*; and I believe the officer has no authority to survey a *malt-house*, unless it be entered as such." *Grose, J.*, thought the fair import of the evidence was, that the defendant was a *maltster* on the *12th of May*, when the witness, as an excise officer, *surveyed his malt-house*. *Le Blanc, J.*, agreed in the same opinion. But *Lawrence, J.*, said, "I have great doubts, whether the fact of the defendant's being a maltster at the time of the offence sufficiently appears. I have always considered, that, in these summary convictions, the evidence necessary to support the charge ought to be precise; and it is not usual to have recourse to inference in order to support a conviction. Suppose the evidence had only been, that the officer surveyed the defendant's *malt-house*; can we infer, merely from the word *survey*, that the *malt-house* surveyed was a *malt-house* entered by the defendant, and that he was a *maltster at the time*? This, I think, would be going further

in support of a conviction than any case has yet gone the length of." The conviction was affirmed (*s*).

On this head, of the sufficiency of evidence admitted by the magistrates, it may be noticed, that, in a conviction on the former statute of 5 Anne, c. 14, s. 4, for keeping and using a greyhound, not being duly qualified, it was held, that the magistrates were justified in founding the defendant's want of qualification upon the circumstance of his having on a former occasion before the same magistrates, acting as commissioners under the income tax, sworn to an estate under 100*l.* a year (*t*).

The evidence on both sides was required to be specially stated in the conviction by 3 Geo. 4, c. 23. This, although contrary, as it seems, to what had been formerly held (*u*), was established as a *general* rule, with one exception only, before the passing of that statute, so that sufficient proof might appear upon the face of the record to sustain every material part of the charge, and to warrant the adjudication. A known distinction in this respect was recognized between orders and convictions; and in the former it was allowed to state the result only of the evidence (*x*).

Evidence not stated in the conviction.

(*s*) *R. v. Crisp*, 7 East, 389, 397.

(*t*) *R. v. Clarke*, 8 T. R. 220. No precise form of words was necessary in stating the proofs of the offence. It was sufficient, if the deposition was in terms ordinarily intelligible, having regard to the usual import of technical modes of speech adapted to the subject. Thus, it being an offence by 42 Geo. 3, c. 38, s. 30, to wet corn or grain, *making into malt*, within twelve days of being taken out of the cistern,—the witness, an excise officer, on a conviction for this offence, stating, "that he found a floor of malt in operation, very wet, which had been watered within four days of being taken out of the cistern," it was held sufficient, notwithstanding the objection that *malt* is not equivalent to *corn making into malt*. By the Court: "It is stated to be a floor of malt in operation, which implies that it was not fin-

ished. This is the language of the witness, which must have a reasonable intendment, and is to be construed according to the common parlance, and the general understanding of mankind, according to which the language used is certain enough. If, indeed, it could have been shown that there is any way in which a floor of malt could be in operation, for any other purpose than of making into malt, a doubt might have been thrown upon it. But none such has been suggested." *R. v. Crisp*, 7 East, 393, 394; 4th objection.

(*u*) *R. v. Pullen*, 1 Salk. 369, in which it was held sufficient to state that the witness made oath *de veritate præmissorum*, without setting out the evidence specially.

(*x*) *R. v. Lloyd*, 2 Str. 996; *R. v. Killett*, 4 Burr. 2063.

The single exception which was admitted with regard to one class of convictions was considered as an anomaly, which could not be drawn into any general consequence, nor afford a precedent for any other class of convictions. The exceptional cases alluded to were all upon the former Game Act, 5 Anne, c. 14 (*y*). Also where the justices were authorized to convict on their own view, the particular facts presented to their view need not have been set out in the conviction (*z*). But every material fact necessary to support such a conviction must have been alleged and proved. Thus, where a conviction by justices upon their own view for a forcible detainer under 8 Hen. 6, c. 9, omitted to aver an unlawful entry, and none was proved, but only an unlawful ejectionment, it was held bad (*a*).

The general form of conviction and order now given by 11 & 12 Vict. c. 43 (*b*), omits all statement of the evidence, and at once proceeds to the adjudication. The Court, therefore, now can form a judgment upon the evidence only when the facts are brought before it by affidavit, or on a case stated for its opinion (*c*).



### SECT. 9.—*Of the Defence.*

1. <i>Proof of Exemption, &amp;c.</i> . . . .	137	4. <i>Mens rea</i> . . . . .	149
2. <i>Claim of Title or other Question beyond Jurisdiction</i> ..	<i>ib.</i>	5. <i>Cumulative Remedy</i> . . . . .	151
3. <i>Res judicata</i> . . . . .	145	6. <i>Agreement between Parties</i> ..	153

When the witnesses in support of the charge have been heard, the defendant should be called upon for his defence,

(*y*) *R. v. Pearse*, 9 East, 358. The general form of conviction given by the later Game Act, 1 & 2 Will. 4, c. 32, dispenses with any statement of the evidence, as well as of the proceedings preliminary to adjudication.

(*z*) *R. v. Wilson*, 1 A. & E. 627;

3 Nev. & Man. 753.

(*a*) *R. v. Wilson*, 5 Nev. & Man. 164.

(*b*) Sect. 14, and schedule.

(*c*) *R. v. Bolton*, 1 Q. B. 66; *Re Geswood*, 2 El. & Bl. 952. *Post*, Part III., Chapters IV. and V.

and the magistrate is bound to hear the evidence tendered by him (e).

The evidence adduced on behalf of the accused may be simply to contradict or throw a different and innocent complexion on the facts proved by the witnesses for the prosecution; or to prove that the accused is within some proviso or exception excusing or qualifying the facts charged; an *onus* (as we have seen (f)) thrown upon him: or to disprove some fact which by statute is to be assumed against him till the contrary is shown; or to set up such a *bonâ fide* claim or dispute as will oust the jurisdiction of the justices, and compel them to abstain from pronouncing any adjudication; or to show that the matter has been already decided, or that the remedy has been misconceived.

It has always been held as a maxim, that where the title to property is in question, the exercise of a summary jurisdiction by justices of the peace is ousted (g). This principle is not founded upon any legislative provision, but is a qualification which the law itself raises in the execution of penal statutes (h), and is always implied in

(e) 11 & 12 Vict. c. 43, ss. 12, 14; 18 & 19 Vict. c. 126, s. 4.

(f) *Ante*, p. 124.

(g) *R. v. Burnaby*, 1 Salk. 181; 3 Salk. 217; 2 Ld. Ray. 900.

(h) It is sometimes, also, the subject of special enactment, as in the statute, now repealed, of 22 & 23 Car. 2, c. 25, s. 9, (the first act which gave an appeal,) the appeal clause making the determination of the justices final, with this proviso, "if no title to any land, royalty or fishery be therein concerned." So also, in the former Petty Trespass Act, 1 Geo. 4, c. 56, there was an express provision, ousting the jurisdiction of the justices, where the title to the property was in question. The Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24, (now superseded by 24 & 25 Vict. c. 97, s. 52), expressly excepts from the jurisdiction of magis-

trates injuries done under a *bonâ fide* claim of right; see *Charter v. Greame*, 13 Q. B. 216, 226. See also 1 & 2 Will. 4, c. 32, s. 35 (Game Act). On the other hand, by 2 & 3 Vict. c. 71, s. 40 (the Metropolitan Police Act), on complaint made to a magistrate acting under that statute, that goods not exceeding the value of 15*l.* are improperly detained, he may inquire into the title thereto or to the possession thereof. Justices also have jurisdiction, under 11 Geo. 2, c. 19, s. 4, to adjudicate upon an information for a fraudulent removal of goods by a tenant, although it may appear that the property in the premises is disputed, and that the tenant has paid the rent to one of the claimants; *Coster v. Wilson*, 3 M. & W. 411: and under the Nuisances Removal Act (11 & 12 Vict. c. 123, s. 3), two justices (or the County

Exemptions,  
proof of.

Claim of title.

their construction : and so rigid is this rule, that even where a statute allows the accused to go into the question of title, he is not obliged to do so, and may object to the jurisdiction of the justices (*i*).

The following cases illustrate the extent and application of this rule.

The first case arose on an objection made to a conviction for deer-stealing, viz. that it was only stated that the defendant unlawfully killed, &c.; for, it was urged, every unlawful killing is not within the act. Upon which Lord C. J. *Holt* said, "Without doubt, if the defendant has but a colour of title, the justices have no jurisdiction. If there is a pretence of right, we ought to suppose that the justice would do right, and acquit the defendant; because he is entrusted with the execution of the law. Thus, if there was a dispute about the limits of a walk in a forest, and one claims as part of his walk what is in fact a part of the division of another, and accordingly kills deer there, the case is out of the intent of the act, though plainly within the words. The intent is, to punish rogues and vagabonds, and not persons who by mistake exceed what the law warrants" (*k*). It should, however, be understood that "there must be some show of reason in the claim, and it is not sufficient unless the defendant satisfy the justices that there is some reasonable ground for his assertion of title" (*l*). The claim, therefore, must be one that can legally exist, and consequently a defendant was not allowed to oust the jurisdiction of the justices by claim-

Court) have exclusive jurisdiction to enforce the repayment of money paid by parish authorities for the abatement of a nuisance, although the title to land may be in question. *Hertford Union v. Kimpton*, 11 Exch. 295; 25 L. J., M. C. 41.

(*i*) *Per Coleridge, J.*, in *R. v. Cridland*, 7 El. & Bl. 853; 27 L. T., M. C. 31; and judges have refused to try a question of title in actions

for game penalties. See *Calcraft v. Gibbs*, 4 T. R. 682, and notes to that case.

(*k*) *R. v. Speed*, 1 Ld. Ray. 583.

(*l*) *Per Cockburn, C. J.*, in *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6. *Per Abbott, C. J.*, in *Hunt v. Andrews*, 3 B. & Ald. 346. See also *Legg v. Pardoe*, 9 C. B., N. S. 289; 30 L. J., M. C. 108; *Calcraft v. Gibbs*, 4 T. R. 682.

ing a right as one of the public to fish in a non-navigable river (*m*), though if he had made such a claim with respect to a navigable one it would have been sufficient (*n*). And, in like manner, a claim by the defendant as one of the public to shoot over certain land where in fact the public had hitherto shot without interruption was held insufficient to stay the justices from hearing the complaint, as no such right is known to the law (*o*). It is sometimes said, and truly, that matter which would not be any defence in an action of trespass may nevertheless form a good ground for protection against a summary conviction. This, however, must be taken to apply to the question of *mens rea* (to which we shall presently allude), and not to the question of ouster of jurisdiction. Where there must be a *mens rea* to constitute an offence, the fact of a man having acted under a claim or notion of right, if established, will form a defence against a criminal proceeding, and must be taken into consideration by the justices, not as a question of title, but as a question of *bona fides*. When, however, the object is to oust the jurisdiction of the justices, on the ground that title comes in question, then the claim must be of such a nature as, if substantiated, would afford a defence to an action (*o*). The claim of title must also be on behalf of the defendant or those through whom he claims, and he cannot set up a *jus tertii* (*p*). In a late case, on the hearing of a complaint under 5 & 6 Will. 4, c. 50, for leaving rubbish on a highway, the defendant, who was owner of the land on both sides of the road, claimed that the soil was his, subject only to a private right of way; and it was contended that this raised a question of title which the justices could not decide. It was, however, held that this was not so, for the title to the land was not disputed, but only the question of high-

(*m*) *Hudson v. M'Rae*, 33 L. J., M. C. 65.

(*n*) *R. v. Stimpson*, 4 B. & S. 301; 32 L. J., M. C. 208.

(*o*) *Leatt v. Vine*, 30 L. J., M. C. 207.

(*p*) *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6.

way or no highway, which was a question for the justices to decide (*r*).

Where the defendant was accused of trespassing in pursuit of game under 1 & 2 Will. 4, c. 32, and it was proved that he was shooting by permission of C., who stated that he had a parol agreement with Lord S., as to whose title no evidence was given, the justices decided that there was a *bonâ fide* claim of right, and the Queen's Bench refused to interfere with their decision (*s*).

As the same rule applies in this particular to actions for penalties, the principles adopted in cases of that description may be referred to as apposite to the present subject. And though these decisions arise chiefly upon one description of offences, viz. that which was founded on the former game laws, it may be useful to collect them in this place under one view; since the principle is equally applicable, in other instances, to the case of persons charged with penalties for acts done under a visible authority or alleged title.

It has been held, that the act of killing fish in a private fishery, after notice given to the owner that it was done with intention to try the right to the place in question, did not subject the parties to penalties under the former act of 5 Geo. 3, c. 14, s. 4, although the same title had before been tried and determined by a verdict against the party now claiming it, the act of parliament having expressly excepted persons who have a just right or *claim* (*t*).

Again, in an action for a penalty for destroying game, the plaintiff was nonsuited by the direction of Mr. J. *Buller*, upon it being proved that the defendant was gamekeeper to Sir R. Hoare of his manor of B., and had as such been in the habit of shooting over the place where the game

(*r*) *Williams v. Adams*, 2 B. & S. 312; 31 L. J., M. C. 109.

(*s*) *Legg v. Pardoe*, 9 C. B., N. S. 289; 30 L. J., M. C. 108.

(*t*) *Kinnersley v. Orpe*, Doug. 516;

and see *Hunt v. Andrews*, 3 B. & A. 341; *Legg v. Pardoe*, 9 C. B., N. S. 289; 30 L. J., M. C. 108; and *R. v. Nunneley*, El., Bl. & El. 852; 27 L. J., M. C. 260.



was killed; and no evidence was given of the place (where the act was committed) being out of that manor. The learned judge said, he would not put it upon the defendant to prove the place within the manor; for that he would not, in such an action, try the boundaries of a manor (*u*). The same learned judge, upon another occasion, refused to let the boundaries of a manor be tried in an action for penalties for killing game; and declared, that if only a colourable title in the person under whom the defendant acted were made out, with the exercise in fact of manorial rights, it would be a sufficient defence against the penalties of the statute (*x*). But in a similar action, evidence of the real title was admitted to negative the existence of a colourable title set up by the defendant (*y*).

The stat. 7 & 8 Geo. 4, c. 30 (now superseded by 24 & 25 Vict. c. 97, s. 52, which, however, is to the same effect), relating to malicious injuries to property, contained a proviso (*z*) in sect. 24, that "nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious, committed in hunting, &c.;" but it was held, that the justices were not obliged to dismiss a charge made under this section for maliciously damaging growing wood, upon the mere statement of the accused party that he acted under a fair supposition of right, but that, in default of proof by him, they might judge from all the circumstances whether or not he did so act. And it was further held, to be no proof of a *bonâ fide* claim subsisting, that several parties, other than the individual charged, had committed similar trespasses, using the same colour of right as that which he professed to rely upon, and that the complainant had obtained injunctions

(*u*) *Hankins v. Bailey*, 4 T. R. 681, note (a).

(*x*) *Blunt v. Grimes*, 4 T. R. 682, note.

(*y*) *Hunt v. Andrews*, 3 B. & A. 341.

(*z*) This proviso applied to the whole act. Burn's Justice, tit. "Malicious Injuries."

from the Court of Chancery against such parties (*a*). So, in an action for penalties for killing game, the defence set up was, that the defendant was gamekeeper to a person named Roebuck, who was merely proved to have been promised a deputation by the plaintiff as lord of the manor, but who had since been warned by him to desist from shooting there. Upon the first trial the jury were directed to consider only, whether the defendant really acted as gamekeeper to Roebuck, which was ruled to be sufficient, however groundless Roebuck's claim might be. A verdict was found accordingly for the defendant; which the Court of Queen's Bench afterwards set aside, on account of the misdirection; and upon that occasion Lord *Kenyon* said, "The Court have before declared, as they now do again, that where a party has even a colourable title only to a manor, a penal action is not a mode of proceeding by which they will investigate it. But here nothing of the sort is pretended, for it is admitted on the part of the defendant, that the plaintiff was lord of the manor; but it is insisted, that he promised the deputation of the manor to Mr. Roebuck. This decides the question; for a man cannot convey to another the power of appointing a gamekeeper, without a conveyance of the manor itself. But it has been said, that the servant acted *bonâ fide*, and is therefore not within the act. He, indeed, chose to trust to what his master told him, but as the master had no right or even colour of title, it is no justification to the servant" (*b*).

In this case it was apparent from the defendant's own showing, that the ground of his excuse, viz., as gamekeeper to a person who was not the lord of the manor, and

(*a*) *R. v. Dodson and others*, 9 A. & E. 704; *Charter v. Greame*, 13 Q. B. 216; and see *Baylis v. Strickland*, 1 M. & G. 591, 598; and *Leatt v. Vine*, 30 L. J., M. C. 207. There are numerous decisions upon the County Court Act, 9 & 10 Vict. c. 95, s. 58, whereby the Court is not to

have cognizance of any action in which the title to corporeal or incorporeal hereditaments shall be in question, and some of these will be found applicable to the subject in the text.

(*b*) *Calcraft v. Gibbs*, 5 T. R. 19; see *Grant v. Hulton*, 1 B. & A. 134.

who only set up an *agreement* for a deputation to *himself*, wholly failed. But, as questions of right can still less properly be examined by magistrates in a summary way, than even in a penal action by a court and jury, it may be prudent for magistrates, when questions of this kind occur, to abstain from any other inquiry than whether the act was really done under an idea of authority entertained at the time, and not fabricated afterwards for the mere purpose of evading the penalties; and, if it appears to have been done under such real impression, to dismiss the complaint, without investigating the legal grounds of the claim at all (c).

Besides ousting the jurisdiction of the justices by a claim of title, the defendant may in some cases attain the same result by raising a question, which, by statutory provisions, the justices are restrained from deciding. Thus, under 57 Geo. 3, c. 127, s. 7, a defendant being summoned for non-payment of a church rate, and *bonâ fide* disputing the validity of the rate or his liability to pay, the justices must forbear giving judgment thereon (d).

Or question beyond jurisdiction.

The claim, however, must be *bonâ fide*, and not a mere pretence to oust jurisdiction, whether it raise a question of title or of any other matter which the justices cannot decide; and it is for the justices to say whether the claim be *bonâ fide*, or a mere pretence (e). They cannot, however, decide contrary to the facts, and so give themselves jurisdiction, but must have reasonable and probable cause for their decision (f), which is subject to review in the Court of Queen's Bench (g).

*Bona fides.*

(c) Upon this subject it may be proper to notice a question which has been raised, without being decided, whether the penalty of keeping an alehouse without licence be incurred by a person acting under a licence which is void, from an irregularity in the jurisdiction of the magistrates who granted it. *Cald.* 305, 306, note (10); *R. v. Bryan*, *Andr.* 81.

(d) And the same rule applies if the rate is, under 5 Geo. 4, c. 36, to

repay a loan borrowed by public works commissioners. *Re Batkin*, 25 L. J., M. C. 126.

(e) See *R. v. Huntsworth*, 33 L. J., M. C. 131; *R. v. Nunneley*, El., Bl. & El. 852; 27 L. J., M. C. 260; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

(f) *Pease v. Chaytor*, *suprà*; *R. v. Pedler*, 5 N. R. 81; *R. v. Kayley*, 10 L. T., N. S. 339.

(g) *Pease v. Chaytor*, *suprà*.

Thus, where a defendant, on being summoned for non-payment of a church rate, objected to the rate as illegal, stated his objections, was willing to be sworn, and asked for an adjournment in order to procure legal advice, it was held that the justices were wrong in deciding that the objection was not *bonâ fide*; Lord *Campbell*, C. J., saying, "there was no colour for their coming to this decision, the evidence was all on one side; it was uncontradicted and showed the defendant was *bonâ fide* resisting the rate. He gave his grounds for so resisting, and those grounds were reasonable" (*h*). So, where the defendants were convicted of trespass in pursuit of game under 1 & 2 Will. 4, c. 32, and it appeared that the defendants stated before the justices that they had authority under the owner of the land, and asked for an adjournment to procure evidence, it was held that there was a *bonâ fide* claim, and that the justices were wrong in refusing to adjourn, and in convicting them (*i*).

Objection of title, &c. being in question, when to be taken.

It is said (*h*) that, upon a suggestion of title, the Court of Queen's Bench, at any time while the conviction re-

(*h*) *R. v. Nunneley*, El. & Bl. 852; 27 L. J., M. C. 260; see also *Backhouse v. Churchwardens of Bishopwearmouth*, 9 C. B., N. S. 315; 30 L. J., M. C. 118, deciding that a quaker falls within the same rule; *R. v. Blackburn*, 32 L. J., M. C. 41, where under the circumstances the justices were held right in deciding that the defendant was not acting *bonâ fide*; and *R. v. Huntsworth*, 33 L. J., M. C. 131, where they were held to be wrong; and *Pease v. Chaytor*, 1 B. & S. 658; 31 L. J., M. C. 1, where it was held that it sufficiently appeared on the declaration that the justices acted without jurisdiction.

(*i*) *R. v. Cridland*, 7 El. & Bl. 853; 27 L. J., M. C. 28.

(*k*) *Per Holt*, C. J., 2 Ld. Ray. 901. In one case, upon an application for an information against a justice for corrupt conduct in his office, in proceeding to convict a party under 1

Geo. 4, c. 56, for a petty trespass committed in asserting a right of way over a road which had lately been stopped up under the order of two justices in petty sessions (the act of trespass being the demolition of a chain-fastening to the gate which had been erected to stop the way), one of the grounds urged was, that the justice had full notice that the act was done merely for the purpose of asserting a right by the alleged trespasser, who had land abutting on the way, and that it was not done *maliciously*, and therefore the justice must be presumed to have acted improperly; and the Court, advertent to the proviso in the statute taking away the jurisdiction of magistrates in such cases, granted the rule *nisi*; but there were other circumstances alleged, tending to show that the justice acted from undue motives. 11il. T. 1825; see *R. v. Harpur*, 1 D. & R. 222; 1 D. & R. Mag. Ca. 67.

mains below, and has not been removed by *certiorari*, will grant a prohibition after conviction to stay the justice from proceeding upon it; but the objection must have been raised by the defendant at the hearing; in strictness, it should be taken in the first instance, before endeavouring to obtain a decision on the merits (*l*); it is not, however, too late to take it after the case has been heard and immediately before the justices give their decision (*m*), but it must be distinctly raised before the decision is actually pronounced (*n*).

There is another maxim of the law, "*nemo debet bis vexari pro unâ et eadem causâ*;" a maxim of general application to civil and criminal proceedings, to actions, orders, summary convictions and indictments (*o*); and another, more especially applicable to criminal matters, "*nemo debet bis puniri pro uno delicto*" (*p*). Consequently, at common law a former conviction or acquittal, whether on a criminal summary proceeding or an indictment, will be an answer to an information of a criminal nature before justices founded on the same facts. The true test to show that such previous conviction or acquittal is a bar is, whether the evidence necessary to support the second proceeding would have been sufficient to procure a legal conviction on the first (*q*). If, however, by reason of some defect in the record, either in the indictment, place of trial, process or the like, the accused was not lawfully liable to

*Res judicata.*

(*l*) *R. v. JJ. Salop*, 2 El. & El. 386; 29 L. J., M. C. 39; see *R. v. JJ. Leicester*, *Id.* 203.

(*m*) *Ex parte Mannering*, 31 *Id.* 153.

(*n*) *R. v. JJ. Salop*, *suprà*.

(*o*) For a fuller discussion of this maxim, see Broom's *Legal Maxims*, 4th ed. p. 321.

(*p*) In some cases depending on the construction of the statute under which the charge is made, the continuance of an offence is a new offence; but in others, although the mischief continues, the legislature have not imposed successive penal-

ties, but have treated one penalty as sufficient for a continuance of it. Thus, on an information for not having a child vaccinated under 16 & 17 Vict. c. 100, s. 2, it was held to be a good answer that the defendant had already been convicted of the same offence in respect of the same child, although it remained unvaccinated; *Pilcher v. Stafford*, 4 B. & S. 775; 33 L. J., M. C. 113.

(*q*) Coleridge, J., in *R. v. Drury*, 3 C. & K. 193; 18 L. J., M. C. 189; *R. v. Machen*, 14 Q. B. 74; 18 L. J., M. C. 213; *R. v. Herrington*, 3 N. R. 468; and see Arch. Cr. Pl. ch. 4, s. 5.

suffer judgment for the offence charged, the former proceeding will be no bar. The previous proceeding, if used as an answer, should have been a decision on the merits, and not in the nature of a mere nonsuit (*r*). In addition to the common law rule, there are many special statutory provisions making summary criminal proceedings a bar to any future ones (*s*). Thus, by 11 & 12 Vict. c. 43, s. 14, if the information be dismissed, the justices may, if they think fit, upon being required to do so, make an order of dismissal of the same, and give the defendant a certificate thereof, which certificate afterwards, upon being produced, shall, without further proof, be a bar to any subsequent information for the same matters against the same party. So by 24 & 25 Vict. c. 100, ss. 44, 45 (substituted for 9 Geo. 4, c. 31, s. 27), if the justices, on hearing certain charges of assault and battery upon the merits, where preferred by or on behalf of the party aggrieved, deem it not to be proved or find it to have been justified, or so trifling as not to merit any punishment, and accordingly dismiss the complaint, they are forthwith to make out a certificate of such dismissal and deliver it to the party against whom the complaint was preferred, and such certificate, or a conviction followed by a fulfilment of the sentence, is expressly declared to be a bar to all further proceedings, civil or criminal, for the same cause (*t*). And where the plaintiff, having served a summons for an assault, gave notice to the defendant that it was abandoned, it was held, that the defendant, on applying for it, was entitled to a certificate of dismissal, and that the dismissal was itself a "hearing" within the above 27th section (*u*). Even if the second charge be differently

(*r*) *R. v. Herrington*, 3 N. R. 468; 12 W. R. 420; *R. v. Machen*, 14 Q. B. 74.

(*s*) As for example, the statute 3 Car. 1, c. 3, s. 5; 9 Geo. 4, c. 31, s. 28; and 18 & 19 Vict. c. 126, s. 12.

(*t*) These and similar provisions in 18 & 19 Vict. c. 126, and 24 &

25 Vict. cc. 96, 97, make summary convictions under them a bar to other proceedings. See *Tunnicliffe v. Tedd*, 5 C. B. 553; *R. v. Robinson*, 12 A. & E. 672; the ratio decidendi in this case is disputed in *Hancock v. Somes*, 1 El. & El. 795; 28 L. J., M. C. 196. See *post*, p. 155.

(*u*) *Bradshaw v. Vaughton*, 8 C. B.,

framed, but based on the same facts, it will be answered by the defence of *autrefois acquit* or *autrefois convict*. Thus, a certificate of dismissal of a charge of assault is a bar to an indictment for unlawful wounding where the transaction is the same (*x*). The objection of *res judicata* must be taken at the hearing before the magistrates, and not reserved as a ground for quashing the conviction or order after it has been made (*z*).

The defendant should be furnished with a copy of the conviction, if it be necessary to his defence against an action or information for the same offence. And where a magistrate refused to grant a copy, which was required for that purpose, he was compelled to pay his own costs of returning the conviction into the Queen's Bench on a *certiorari*, which the defendant was under the necessity of suing out, as the only means of procuring a copy (*a*).

It does not often happen that the magistrates, when they acquit the party, are called upon to make a record of their proceedings (*b*). But, if they were so called upon by writ of *certiorari*, and their return disclosed a *prima facie* case upon which the defendant might have been found guilty, nevertheless, the Court of Queen's Bench, upon the principle already mentioned of considering the magistrates in the situation of a jury, would not interfere with their judgment. Thus, where a proceeding on 7 Geo. 2, c. 19, had been instituted for using sulphur for drying hops, to a writ of *certiorari*, which had been issued by the prosecutor, in order that the magistrates might return a special case,

N. S. 103; 30 L. J., C. P. 93. The granting of the certificate is a ministerial act consequent on the dismissal. The application for it need not be made in the presence of the other party, and, as it seems, it may be made at any time, the word "forthwith" in the statute meaning forthwith on application for it, and not forthwith on dismissal of the information. *Hancock v. Somes*, 1 El. & El. 795; 28 L. J., M. C. 196;

*Costar v. Hetherington*, 1 El. & El. 802; 28 L. J., M. C. 198. As to ministerial acts, see *ante*, p. 20, n. (*k*).

(*x*) *R. v. Elrington*, 31 L. J., M. C. 14.

(*z*) *R. v. Herrington*, 12 W. R. 40; 3 N. R. 468; and see *Toft v. Rayner*, 5 C. B. 162.

(*a*) *R. v. Midlam*, 3 Burr. 1721; and see *post*, Part III., Chapter I.

(*b*) See Part III., Chapter I.

which it was expected they would do,—they thought proper to make a return, setting out the deposition of a witness to the fact of the defendant having thrown half a pound of sulphur upon a charcoal fire then using for drying hops; “but because the informer, J. L., does not produce before us any other evidence against the said defendant, and because all and singular the premises being heard and fully understood by us the said justices, it manifestly appears to us that the said defendant ought not to be convicted of the premises above laid to his charge; therefore it is considered that he be acquitted, and he is acquitted.” On this record being returned to the *certiorari*, the Court said, the evidence given was entirely and exclusively for the justices below, who were placed in the situation of a jury; and, as they had acquitted the defendant, the Court could not substitute themselves in the place of the justices acting as jurymen, and convict him. They could not judge of the credit due to the witnesses, whom they did not hear examined. They could only look to the form of the conviction, and see that the defendant, if convicted, had been convicted on legal evidence. That, on this return, they must consider that the magistrates had determined on the facts, and not on the law as distinguished from the facts (*c*).

A more difficult matter for consideration is, how far a former civil proceeding is a bar to a criminal one; for a

(*c*) *R. v. Reason*, 6 T. R. 376. So in actions on penal statutes, where a verdict is found for the defendant, the Court will not, in general, grant a new trial, even though the verdict is contrary to the judge's direction, and founded on a mistake, if there has been no misconduct in the jury; *Hall v. Green*, 9 Exch. 247; 23 L. J., M. C. 15; *Ranston v. Etteridge*, 2 Chit. 273; see *R. v. Mann*, 4 M. & S. 337; *Brook v. Middleton*, 10 East, 268; *Wilson v. Rastall*, 4 T. R. 753; *Calcraft v. Gibbs*, 5 T. R. 19; *Lord Selsea v. Powell*, 6 Taunt. 297;

*R. v. Francis*, 2 T. R. 484; and *R. v. Wandsworth*, 1 B. & A. 63. *Vide post*, tit. “Of Appeal to the Sessions.” Where magistrates at sessions without hearing the merits quash a conviction for a defect in form, the Court of Queen's Bench will, upon a removal of the order by *certiorari*, quash the order of sessions if they are of opinion that there is no defect in form, and will send the case back to be heard upon the merits. *R. v. Ridgway*, 5 B. & A. 527.



man may at the same time render himself liable to both civil and criminal proceedings. Thus, at common law (apart from statutory provision) a person may be exposed for one and the same act to an action for damages to the injured person, and a criminal proceeding for the breach of the peace (*d*); and sometimes statutes specially provide (*e*), that an offender shall be liable both to civil and criminal proceedings. At the same time it is right and is the practice to take the one matter into consideration in proceeding on the other; for instance, when an action is pending judgment will not be given on an information for an assault (*f*). Technically speaking, in such a case there is no estoppel on the justices from proceeding, unless, perhaps, where the proceeding before them, though nominally criminal, is actually for the vindication of the party injured rather than for the ends of public justice. But, without entering at length into this question, the safe practical rule for the justices to act on would seem to be this, when it appears that civil proceedings are pending in respect of the same matter, to dismiss the complaint or pass a nominal sentence, unless there has been an outrage on public order; or unless by statutory provision (as in the case of trade marks) the civil and criminal proceedings are not to interfere with each other. Should the second proceeding be merely to indemnify the complainant from an alleged wrong, a previous civil decision as to the same matter will be conclusive; thus, judgment against a servant in the County Court for a wrongful dismissal, is an answer to an application to justices to enforce payment of wages (*g*).

There is probably no maxim known to our law of more *Mens rea.* beneficial operation than that which requires a criminal intent in order to fix a criminal responsibility. It is

(*d*) Grier, J., 14 How. U. S. R. 20.

(*e*) 25 & 26 Vict. c. 88, as to trade marks.

(*f*) *R. v. Mahon*, 4 A. & E. 575.

(*g*) *Routledge v. Hislop*, 24 L. J., M. C. 90; and see *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

generally expressed in the words, "*actus non facit reum, nisi mens sit rea*," and while it is of very limited application in civil proceedings, it is almost universally applied to those which are of a criminal nature (*i*). The test of its application, therefore, in general depends on the question, what is the character of the complaint, is it of a civil or a criminal nature? This was the view taken by the Court of Queen's Bench with regard to an information for sending dangerous goods by railway, which under the Railway Act before the Court exposed the "senders" to a penalty of 10*l.*, enforceable against them as "offenders" by imprisonment for three months; and the act was construed as meaning, if parties *knowingly* sent the goods (*k*), *Erle, J.* saying, "There is no doubt in the case, if it is a criminal proceeding. . . . I had rather thought, that the enactment was in the nature of a protective clause, providing, that if any one sent destructive articles by the railway, he should be liable. . . . The senders clearly for every purpose, except criminal proceedings, warrant that there was no aqua fortis, &c., in the parcel; but if this proceeding is a criminal one, which I do not deny, I cannot say that they are liable, unless they had knowledge of the dangerous nature of the goods." And the same construction was put on the old statute relating to the possession of naval stores (*l*).

It is on the ground, that a trespass in pursuit of game is of a civil rather than of a criminal character, and is punishable as an offence for the sake of protecting property, that a defendant may be convicted of it, although he was not conscious that he was committing a trespass. Thus by 1 & 2 Will. 4, c. 32, s. 30, any person charged with a trespass in pursuit of game may prove by way of

(*i*) An offence implies intention in the offender; and "wilfully" is, in general, equivalent to "knowingly and fraudulently;" *per Erle, J.*, in *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 85; and see *per Lord*

Campbell, C. J., *Id.* 90; and see Broom's Leg. Max. (4th ed.), p. 34.

(*k*) *Hearne v. Garton and Another*, 2 El. & Bl. 66; 28 L. J., M. C. 216; see Index, verb. "Knowledge."

(*l*) *R. v. Sleep*, 30 L. J., M. C. 170.

defence any matter which would have been a defence to an action at law for such trespass, except that the leave and licence of the occupier of the land so trespassed upon shall not be a sufficient defence in any case where the landlord, &c., shall have reserved the right of killing the game; but such landlord, &c., shall be deemed to be the legal occupier of such land, whenever the actual occupier thereof shall have given such leave and licence. It has been held, that it is not necessary, in order to support a conviction under this section, that the defendant should have intended to commit or have been conscious that he was committing a trespass (*m*). And the same rule prevails on an information under 24 & 25 Vict. c. 96, s. 24, for "unlawfully and wilfully" fishing in the private fishery of another (*n*). But a conviction cannot take place "for being in possession of the young of salmon" in contravention of the Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), unless the defendant knew that they were the young of salmon. Thus where the defendant with rod and line caught a number of samlets whilst he was fishing for trout, not knowing the difference, and having no intention of taking the young of salmon, it was held that he could not be convicted under sect. 15 of that act (*o*).

The increase of statutes constituting new offences or altering old ones, and often prescribing specific methods of procedure, has on many occasions raised very difficult questions as to the nature and number of the remedies available.

Wherever the law simply declares an act to be unlawful the doer of it may be punished by indictment, but where the legislature creates an offence and imposes only a penalty for committing it, there no indictment lies, but the penalty may be recovered (*p*). So if a statute create

Cumulative  
remedy.

(*m*) *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213; *per* Williams and Willes, JJ. (*dubitante* Keating, J.); see also *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28, 30.

(*n*) *Hudson v. M' Rae*, 33 L. J., M. C. 65.

(*o*) *Hopton v. Thirwall*, 12 W. R. 72; 9 L. T., N. S. 327.

(*p*) *Per* Pollock, C. B., in *Fox v. The Queen*, 29 L. J., M. C. 54.

a new obligation and a new remedy, the remedy pointed out by the statute must be followed (*q*); or, in the words of Lord *Tenterden*, "Where an act creates an obligation, and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner" (*r*). These questions generally arise in such a form as to have no bearing on our present subject; as, for instance, where the contention is, whether an action will lie in addition to the remedy pointed out by the particular statute (*s*). No difficulty analogous to this can of course arise as to a summary conviction, inasmuch as the jurisdiction must always exist by express statutory provision. But sometimes it happens, that after an offence has been created and summary jurisdiction over it given by a statute, a second statute is passed relating to the same matter. Upon this point, it has been held, that if a later statute again describes an offence created by a former one and affixes a different punishment varying the procedure and giving an appeal when there was no appeal before, proceedings must be taken under the later statute, which operates by way of substitution and not cumulatively (*t*). The same result

(*q*) *Mayor of Blackburn v. Parkinson*, 1 El. & El. 71; 28 L. J., M. C. 7; *Vestry of St. Pancras v. Batterbury*, 2 C. B., N. S. 477; 26 L. J., C. P. 243.

(*r*) *Doe v. Bridges*, 1 B. & Ad. 847; and see *Guardians of Hertford Union v. Kimpton*, 11 Exch. 295; 25 L. J., M. C. 41.

(*s*) See upon this point *Timms v. Williams*, 3 Q. B. 413; *Albon v. Pike*, 4 M. & G. 421; *Couch v. Steel*, 3 El. & Bl. 402; 23 L. J., Q. B. 121, 126; *S. C.*, *Sharpe v. Warren*, 6 Price, 131; *Reeves v. White*, 21 L. J., Q. B. 169; *Shepherd v. Hills*, 11 Exch. 55; 25 L. J., Exch. 6. See also *R. v. Trafford*, 4 El. & Bl. 122; *R. v. Ingham*, 21 L. J., M. C. 125; *The Attorney-General v. Radloff*, 23 Id. Exch. 240, 242; *Watkins*

*v. Great Northern Railway Company*, 16 Q. B. 961; *Giles v. Hutt*, 3 Exch. 18; *Great Northern Railway Company v. Kennedy*, 4 Exch. 417; *Cutbill v. Kingdon*, 1 Exch. 494; *Novello v. Ludlow*, 21 L. J., C. P. 169; *Stone v. Marsh*, 6 B. & C. 551; *Kelsall v. Tyler*, 11 Exch. 513; 25 L. J., Exch. 153; *Barker v. Midland Railway Company*, 18 C. B. 46; 25 L. J., C. P. 184; 10 Jur., N. S. 172; *R. v. Crawshaw*, 30 L. J., M. C. 58, 64; *Vestry of St. Pancras v. Batterbury*, 2 C. B., N. S. 477; 26 L. J., C. P. 243; 25 & 26 Vict. c. 102, s. 77; 1 & 2 Will. 4, c. 32, s. 46.

(*t*) *Michell v. Brown*, 1 El. & El. 267; 28 L. J., M. C. 53, 55, in which Lord Campbell, C. J., said, "If the later statute expressly altered the quality of the offence by

would, it seems, follow an alteration in the procedure and punishment, without reference to the question of appeal.

In strict law no agreement between the complainant and the accused can put an end to criminal proceedings, but it very often happens (as we have before said) that the proceedings, though technically of a criminal nature, are more for the benefit of the injured person than the vindication of public justice, and it is also frequently a difficult matter to decide whether they are criminal or civil.

Agreement between parties.

Even if the proceeding be merely civil, and for the benefit of individuals, justices may disregard any agreement set up by way of defence, if it is not between all the parties interested. Thus, where a father of a bastard child had agreed to pay to the mother 5s. a week for its maintenance, and had then paid her 10*l.*, in consideration of which she agreed to release him from all further payments, it was held that this was no *bar* to the jurisdiction of a justice to make an order for the support of the child on her subsequent application, under 7 & 8 Vict. c. 101, as the statute was for the benefit of the child as well as of the mother; but that the justice ought to take it into consideration, together with the other circumstances, and then exercise his discretion as to making an order (*u*).



#### SECT. 10.—*Evidence in reply.*

If the defendant has examined any witnesses, or given any evidence, other than as to his general character, the prosecutor or complainant may examine witnesses in reply (*x*).

Evidence in reply.

The prosecutor or complainant, however, is not entitled to make any observations in reply upon the evidence given

Observations in reply not allowed.

making it a misdemeanor instead of a felony, or a felony instead of a misdemeanor, the offence could not be proceeded with under the earlier statute, and the same consequence

seems to follow from altering the procedure and the punishment."

(*u*) *Follitt v. Koetzow*, 29 L. J., M. C. 128.

(*x*) 11 & 12 Vict. c. 43, s. 14.

by the defendant, nor is the defendant entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply (*y*). When the case and evidence have been heard on both sides, it remains for the magistrate to convict the party, or to dismiss the information, according to his judgment upon the circumstances.



SECT. 11.—*Procedure under 18 & 19 Vict. c. 126.*

Before concluding this branch of our subject, it is well to draw attention to the peculiar procedure under 18 & 19 Vict. c. 126 (*z*). By that act, whenever a person is charged before justices with simple larceny, the value of the property in their judgment not exceeding 5s., or with an attempt to commit either simple larceny or larceny from the person, then, if there be no previous conviction or the justices do not think the matter, from other circumstances, a fit subject for indictment, they may, by consent of the accused, try the question. And, in order to obtain that consent, one of the justices, after the examinations of the witnesses for the prosecution are at an end, and before calling on the person charged for any statement he may wish to make, must state to him the substance of the charge, and then say to him, “Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes?” (as the case may be), or words to that effect. If the accused consent, the charge is then reduced into writing; he is asked to plead, and if he pleads guilty, sentence is passed; if he pleads not guilty, his defence is heard in the usual way. And if any person be charged before justices with simple larceny (beyond the above amount), larceny from the person or larceny as a clerk or servant, when the case

(*y*) 11 & 12 Vict. c. 43, s. 14.

(*z*) See this Act in the Appendix, Part I.

for the prosecution is closed the justices, if they think there is sufficient evidence to put the accused on his trial, and that the matter may be properly disposed of summarily, may reduce the charge into writing: and, after explaining to him that he is not obliged to plead or answer before them at all, may ask him if he be guilty or not, should he plead guilty, they can then sentence him; but if he do not so plead, he must be committed for trial in the usual way.

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SECT. 12.—*Dismissal of Complaint; Discharge from first Conviction.*

The general rule is, that if the charge is substantiated and no valid defence proved, the duty of the justices is to convict, whilst, if the case for the prosecution fail or a valid defence is shown, it becomes their duty to dismiss the charge. This is so obvious, that it would not have been necessary to allude to it, but for the fact that sometimes the statute relating to the offence contains exceptional provisions on this point. Thus, 24 & 25 Vict. c. 100, enacts, that on certain charges of assault and battery, the justices may dismiss the complaint if they think the offence so trifling as not to merit punishment; and under 18 & 19 Vict. c. 126, the justices may dismiss the person charged, under sect. 1 of that act, without proceeding to a conviction, if they think there are circumstances in the case which render it inexpedient to inflict any punishment. Again, 24 & 25 Vict. cc. 96, 97, though they do not provide for the dismissal of informations, enact, that where a person is summarily convicted under their provisions, and it is a first conviction, the justice may discharge the offender on his making such satisfaction to the person grieved for damages and costs or either of them, as the justice shall direct.

By 11 & 12 Vict. c. 43, it is provided, that whenever the case is dismissed (unless it falls within sect. 35) it

shall be lawful for the justices if they think fit, being required so to do, to make an order of dismissal, and give the defendant a certificate thereof. And in some other acts there are analogous provisions applying only to the particular statutes in which they are contained. Thus, 18 & 19 Vict. c. 126, provides, that when there is a dismissal under that act the justices shall make out and deliver to the person charged a certificate thereof; and 24 & 25 Vict. c. 100, contains a similar provision (*a*).

As to costs, it is provided by 11 & 12 Vict. c. 43, that in all cases of dismissal (not within sect. 35) the justices may order the complainant to pay the defendant such costs as seem to them reasonable, the amount to be specified in the order of dismissal, and recovered as penalties are recovered.

(*a*) *Ante*, p. 146.



## PART II.

## OF THE CONVICTION.

## CHAPTER I.

OF THE GENERAL FORM AND REQUISITE QUALITIES OF A  
CONVICTION.

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WE proceed, in the next place, to explain the form and requisites of the conviction itself, which may be described as a record, containing a memorial of the proceedings had under the authority of a penal statute before justices of the peace, or commissioners duly authorized to receive an information and proceed to judgment (*a*). Definition of a conviction.

As the proceedings of justices of the peace by summary conviction are matter of record (*b*), it is a part of their duty, upon every conviction, to record the proceedings in a formal shape, certifying them under their hand and Record.

(*a*) 1 Salk. 377 ; Bosc. 7 ; Dickinson's Quarter Sessions (6th ed.), p. 871.

(*b*) Dalt. c. 2, s. 4. According to Lord C. J. Holt, in the case of *The College of Physicians*, 1 Salk. 200, wherever there is a jurisdiction created with power to fine and imprison, that is a Court of Record, and what is there done is matter of record, and so in 8 Co. 60, 38. Lord C. J. De Grey, however (*Miller v. Seare*, 2 Bl. Rep. 1146), observes that this position cannot be universally

true. But the reasons assigned by Dalton, c. 2, s. 4, for considering the acts of justices of peace on penal statutes as matters of record seem to justify the describing them as such. That penal convictions have always been considered as records appears from the uniform and, as it should seem, indispensable practice (before the Act of 4 Geo. 2, c. 26), which required them, when filed, to be in Latin, as all records then necessarily were by the statute of Edw. 3. In the case of *R. v. Chaveney* (anno 11

seal (*c*), which is the only regular mode of authenticating them as their records (*d*). This is also necessary for the purpose of having convictions returned and filed among the records at the general quarter sessions of the peace, which ought to be done in all cases (*e*).

The summary jurisdiction of magistrates, though their proceedings be matter of record, is not however comprehended under the general denomination of the jurisdiction of the Queen's Courts; and therefore it has been resolved that the provisions of acts of parliament, which speak of proceedings by plaint or information in any of her Majesty's

Geo. 1), 2 Lord Raym. 1368, a conviction for swearing was quashed because it was in English. Lord Holt, indeed, in another case (*R. v. Lomas*, Comb. 289; *Skin*. 562) said, that he saw no necessity why a conviction for keeping a private still should be in Latin any more than an order of bastardy. The practice, however, was taken for granted in the case of *R. v. Lloyd*, 2 Str. 999, and referred to as a criterion to distinguish orders from convictions. It is further confirmed by 6 Geo. 1, c. 21, s. 3, and by the form used in writs of *certiorari* applicable to such proceedings by which they are styled "records," and by 11 & 12 Vict. c. 43, s. 14, which requires them to be filed among the records of the general quarter sessions of the peace. The doctrine that magistrates acting judicially are judges of record was fully recognized in *Basten v. Carew*, 3 B. & C. 649; 5 D. & R. 558; 2 D. & R. Mag. Ca. 563, *S. C.* See further on this point, *Re Hammond*, 9 Q. B. 96; *Chaney v. Payne*, 1 *Id.* 724; *Charter v. Greame*, 13 *Id.* 223; *R. v. Yeeveley*, 8 A. & E. 806, 810. Formerly, also, convictions were drawn up on parchment, which was necessary in the case of records (*Co. Litt.* 260 a; *Termes de la Ley*, tit. "Record," p. 572 (edit. 1685); *Re Hammond*, 9 Q. B. 96, 99; *R. v. Yeeveley*, 8 A. & E. 810, 819; *Charter v. Greame*, *supra*), but now they may be on parchment or paper; 11 & 12 Vict. c. 43, s. 17: so may coroner's inquisitions, unless they be of murder or manslaughter, in which cases they

must still be on parchment. 6 & 7 Vict. c. 83, s. 2.

(*c*) 11 & 12 Vict. c. 43, s. 14. In *R. v. Glossop*, Easter Term, 2 Geo. 4, where a *certiorari* was directed to justices to certify proceedings at sessions under their hands and seals, and the return omitted their seals, the Court gave leave to amend the return in that respect, and sent it back for that purpose; Mr. Dowling's MS. An adjudication by magistrates of compensation under the Lands Clauses Consolidation Act, 1845, is in the nature of an award rather than of an order, and therefore the justices need not make it in writing, but may give their decision verbally. *R. v. Combe*, 32 L. J., M. C. 67.

(*d*) 1 Burn's J. (29th edit.) 987. See *Basten v. Carew*, 3 B. & C. 649; Bosc. 11.

(*e*) 11 & 12 Vict. c. 43, s. 14; and see *R. v. Eaton*, 2 T. R. 285. Even before the late statute, all convictions ought in point of strictness to have been returned and filed at the sessions, more particularly in those cases where any part of the penalty went to the crown, in order that such fines might be estreated into the Exchequer. See *post*, Part 3, Chap. 1, and also *post*, "Penalties," as to the mode of enforcing fines and forfeitures. In *R. v. Bach*, 1 Str. 137, it was held that there must be a formal conviction upon the former statute relating to hawkers and peddlers (8 & 9 Will. 3, c. 25), though the statute mentioned nothing of it.

Courts, do not extend to proceedings of a summary nature before justices of the peace (*f*).

This seems a proper place to say a few words upon the distinction between orders and convictions, with a view of attempting some determinate criterion of separation between them. Distinction between orders and convictions.

In truth, it is not easy to fix any rule for distinguishing in the abstract between what things are the subject of *orders*, and what of *convictions*. Practice seems chiefly to have been consulted in the distinction. Before the statute of 4 Geo. 2, c. 26, convictions were always recorded in Latin, whereas orders were returned in English; and we find this circumstance referred to as a criterion used by the Court in determining that a particular instrument, viz. a judgment of removal of a clerk of the peace by the justices in sessions, should be considered as an order, and not as a conviction, and consequently as not requiring the evidence to be set out (*g*).

It would be beside the present purpose to inquire into the grounds of this distinction; it is sufficient to observe that the Courts have been more strict in construing convictions than orders (*h*); that formerly, when it was necessary to allege in convictions that the defendant had been summoned, and to set forth the evidence and to state that it had been taken in his presence and upon oath, a different rule prevailed with regard to orders. In these the evidence was not set forth (*i*), and if jurisdiction appeared the Courts would intend that the justices had proceeded regularly, that the party had been summoned (*k*), and the

(*f*) *R. v. Steventon*, 2 East, 374; *R. v. Crisp*, 1 B. & Ald. 282.

(*g*) *R. v. Lloyd*, 2 Str. 996.

(*h*) One reason assigned *arguendo* in *R. v. JJ. Radnorshire*, 9 Dowl. 90, 93, was, that as orders must be drawn up before they are acted upon, and convictions may be drawn up afterwards, the Courts were more liberal in their construction of the former than of the latter; this reason no longer exists, and in modern times our judges have emancipated them-

selves from artificial rules of construction founded on technical distinctions, and seek to apply the same reasonable interpretation to all documents brought before them. See *post*, pp. 164, 178. See also *Lindsay v. Leigh*, 11 Q. B. 465.

(*i*) *R. v. Lloyd*, *supra*.

(*k*) *R. v. Venables*, 2 Ld. Raym. 1405. See *R. v. Clayton*, 3 East, 57, and *Labalmondiere v. Frost*, El. & El. 527; 28 L. J., M. C. 155.

evidence taken in his presence (*m*), upon oath (*n*). Two other distinctions (one of which still exists) which are independent of the form or construction of the documents, should be noticed, namely, first, that an order formerly must have been drawn up before it was acted upon, but a conviction might have been drawn up after it had been acted upon (*o*); and secondly, that an order may be good in part and bad for the residue (*p*), whereas a conviction is an entire judgment and indivisible: if any material part be faulty, it vitiates the whole (*q*). The first of these distinctions, however, no longer exists except in a few cases (*r*), as by 11 & 12 Vict. c. 43, the justices are required, both in the case of a conviction and an order, to make a minute or memorandum at the time and afterwards to draw them up in proper form under their hands and seals.

The cases which seem to come the nearest to the nature of *convictions*, and which nevertheless have been treated as *orders*, so as to let in the less rigorous rules applicable to the latter, are the following, viz. orders of bastardy under 18 Eliz. c. 3; 49 Geo. 3, c. 68 and 2 & 3 Vict. c. 85; penal proceedings under 5 & 6 Edw. 6, c. 25, against persons continuing to keep a public-house after an order of justices to suppress it; and those against tenants fraudulently removing goods to avoid distress, under 11 Geo. 2, c. 19 (*s*).

*Orders of bastardy*, as the name imports, have always been considered to belong to the class of orders; and there-

(*m*) Burn's Justice, tit. "Bastard."

(*n*) See *Ormerod v. Chadwick*, 16 M. & W. 382.

(*o*) See *R. v. JJ. Radnorshire*, 9 Dowl. 93.

(*p*) *R. v. Maulden*, 1 M. & R., M. C. 385; *R. v. Robinson*, 17 Q. B. 466, 471; *R. v. Green and others*, 20 L. J., M. C. 168, and the cases therein cited.

(*q*) *R. v. Catherall*, 2 Str. 900; 1 T. R. 249, *post*, p. 177. By consent, however, it seems that a con-

viction may be set aside as to part of the judgment; *R. v. Hale*, Cowp. 728.

(*r*) See exceptions, sect. 35 of 11 & 12 Vict. c. 43; and sect. 10 of 18 & 19 Vict. c. 126.

(*s*) An adjudication by justices of compensation under the Lands Clauses Consolidation Act is in the nature of an award rather than an order, and need not be reduced into writing; *R. v. Combe*, 32 L. J., M. C. 67.

fore they did not contain any allegation of the defendant's presence during the examination (*t*). Lord *Holt*, indeed, declared upon one occasion, that he could not see any reason for the distinction between orders of bastardy and convictions (*u*). However, the words of the statute 18 Eliz. c. 3, which direct the justices to *take order* for the keeping of the bastard child, &c., as well as the nature of the proceeding, which was more for the purpose of indemnity to the parish than of punishment for an offence, may appear to account for the uniform practice in treating these as of a different class from penal convictions.

In a recent case, where an order in bastardy was held to be invalid, for omitting to state that it was made within forty days after service of the summons upon the putative father according to the stat. 7 & 8 Vict. c. 101, s. 4, Mr. Justice *Patteson* said "The inclination of the Court of late has been to treat orders of a final nature like the present more as convictions than as orders. I do not mean to say, that an order in bastardy is to be considered for all purposes as a conviction, but I do not quite see how an order fixing the party as the putative father of a bastard, and compelling him to pay the costs of its maintenance, differs materially from a conviction" (*x*).

The reasons which have prevailed in reference to the case secondly alluded to, that of a proceeding under 5 & 6 Edw. 6, c. 25 (*y*), for *keeping open an alehouse* after an order to suppress it, seem to be, that the defendant was guilty of a contempt in disobeying the first order, and that the power of imprisonment in that case was something similar to process of attachment (*z*). However, it should be observed, that the necessity of a previous summons, in

(*t*) 1 Burn's Justice, by Chitty, tit. "Bastard," and the cases there cited and commented on. See *R. v. Upton Gray*, Cald. 308; 1 Bott, 482.

(*u*) *R. v. Lomas*, Comb. 289; and see *R. v. Austin*, 8 Mod. 309.

(*x*) *R. v. Rose and another*, 3 D. & L. 359; and see *R. v. JJ. Cheshire*,

3 D. & L. 337; 15 L. J., M. C. 3, and *Id.* 4, n. (1).

(*y*) See now 9 Geo. 4, c. 61.

(*z*) *R. v. Venables*, 2 Ld. Raym. 1405; 8 Mod. 378; 1 Str. 630; Sess. Ca. 210; and see *R. v. Allington*, 2 Str. 678.

fact (though it need not have been stated in the order), was somewhat inconsistent with that mode of considering it.

With respect to the third case, that of a penal proceeding against a person for assisting in the *fraudulent removal of goods* to avoid a distress under 11 Geo. 2, c. 19, s. 4, the language of that act certainly seems to point out a proceeding altogether similar to that which is understood by a summary conviction; and there can be little doubt that it would be regular in this form, of which there exist many precedents. But it is nevertheless certain, that those proceedings have been not only deemed valid in the shape of *orders*, but, upon that ground merely, have been allowed to admit of informalities which would have been fatal in a conviction. There are on the files of the Crown Office several instruments of this kind, which, as well as being upon the file of *orders*, and not of *convictions*, are returned in consequence of writs of *certiorari* “to return all orders;” whereas the *certiorari* for a conviction is always “to return all records of conviction;” of these are *R. v. Bissex*, temp. 29 & 30 Geo. 2, and soon after *The King v. Middlehurst*. The former of these cases is given at length in Burn’s Justice (a); and after some discussion upon the question, whether the matter was properly the subject of an order, it was agreed to be regular in that form. Mr. J. Denison, in delivering the resolution of the Court, expressed himself to this effect:—“I think the most material question is, whether this is an order, or a conviction. If a conviction, the evidence ought to have been set out. It was so held by Lord Hardwicke, in the case of *The King* and *Lloyd* (b); and in that case it was objected, that as it subjected the party to a penalty, though in the statute it was called an order, yet it should be construed as a conviction; but the Court said, every act of the justices which subjects the party to a penalty shall not be construed as a conviction.

(a) 2 Chitty’s Burn’s Justice (29th edit.), tit. “Distress,” pp. 286, 287

n. (a); Sayer, 304, S. C.  
(b) 2 Str. 996.

I understood from my Lord *Hardwicke*, in the case of *The King v. Lloyd*, that his ground of the difference was founded upon the expression of the statute, and not upon the penalty; as where the words of the statute are 'of which he shall be convicted,' it is to be construed a conviction. Here it is extremely strong; the statute calls it an order, and in the nature of it, it is an examination upon a complaint" (c).

The other case upon the same statute, *R. v. Middlehurst*, is reported by Sir *J. Burrow*. In that, the objection to the offence being charged in the alternative, viz. for removing or concealing the goods, was overruled expressly upon the ground that this was an order (d). It is doubtful, however, whether *R. v. Bissex* and *R. v. Middlehurst* would now be upheld, and whether the penal proceedings in those cases, construed as orders, would not be treated as convictions (e).

In the case of *R. v. Rabbits and another* (f), which arose upon the same statute (s. 4), an order and adjudication having been made by two justices on the defendants, for fraudulently and clandestinely removing goods and chattels, not exceeding the value of £50, to avoid a distress for rent, it was held, that the order need not enumerate or specify the particular goods and chattels alleged to have been removed: *Abbot*, C. J., saying, "The statute does not require, that the justices shall specifically enumerate and set a value upon each article supposed to have been fraudulently and clandestinely removed, and therefore I think it is unnecessary for them so to do. Indeed, it would be most unreasonable to expect such an enumeration and valuation (g).

(c) There seems, however, no doubt that it would have been good as a conviction. *R. v. Morgan*, Cald. 156.

(d) 1 Burr. 399. And see *R. v. Pain*, 7 D. & R. 678; 3 D. & R. Mag. Ca. 552, where Bayley, J., said, "There is an acknowledged distinction between an order and a conviction."

(e) See *R. v. JJ. Radnorsh.*, 9 Dowl. 90, 98; *R. v. Darton*, 12 A. & E. 78, 81; 2 Burn's Justice (29th edit.), tit. "Distress," pp. 286, 287, n. (a).

(f) 6 D. & R. 341; 3 D. & R. Mag. Ca. 269.

(g) And see 1 Chitty's Burn's Justice, tit. "Distress;" and *Ex parte Pilton*, 1 B. & Ald. 369.

So in *Basten v. Carew* (*h*),—where the question arose upon the 16th section of the same statute, which gives a summary remedy to landlords, whose tenants have deserted their premises with rent in arrear, not leaving sufficient goods for a distress, authorizing, on the lessor's request, two justices on their own view to deliver possession,—trespass being brought against two magistrates for turning a tenant out of possession under the act, a record of the proceedings, drawn up conformably to the statute, was given in evidence; and the Court held, that it was a complete defence to the action, though the justices did not appear to have acted on the *oath* of the landlord.

The only criterion afforded by these cases, for distinguishing when penal proceedings are to be considered as orders, and when as convictions, is that alluded to by Lord *Hardwicke*, viz. whether they be so denominated by the statute (*i*).

The practical result of the distinction was thus pointed out by Mr. Justice *Williams* in the case of *The Queen* against *The Justices of Radnorshire* (*k*):—"Admitting the general rule, which is confirmed by many cases, that a conviction should be construed strictly and an order liberally, the value of that rule is greatly diminished by the difficulty of applying it to each particular case. I much doubt whether upon examination there will be found any rule of law which prescribes or even allows language to be forced from its ordinary import and fair meaning to support one instrument or to invalidate the other. Since the case of *Rex v. Hulcott* (*l*), which has been recognized in many subsequent and recent decisions, it may be questioned whether any intelligible distinction exists at all" (*m*).

(*h*) 5 D. & R. 558; 2 D. & R. Mag. Ca. 563; 3 B. & C. 649.

(*i*) *R. v. Bissez*, *supra*, p. 162.

(*k*) 9 Dowl. 98. See further upon this subject, *Ormerod v. Chadwick*, 16 M. & W. 382; *R. v. Inhabitants of Stainforth*, 11 Q. B. 66, 75; *R. v. Preston*, 12 Q. B. 816; 5 Burn's Justice (29th edition), tit.

"Order," pp. 287—289.

(*l*) 6 T. R. 583.

(*m*) The learned judge's remarks were made with reference to an order of a final nature (for assisting in the fraudulent removal of goods) subjecting the party to a penalty, and the real distinction may be not between that class of orders and



Warrants of commitment and convictions.

In some cases, as under the Master and Servants Act (4 Geo. 4, c. 34) (*n*), the justices are authorized to commit the party to prison at once, without any previous conviction. The words used in that statute are, "that upon complaint, if it shall appear to the justice that the servant has not fulfilled his contract, &c., the justice may commit him to the house of correction." After frequent discussion as to the nature and construction of the instrument by which the defendant is committed to prison under this act, it has been decided that whether it is strictly a warrant of commitment, a conviction or an order, only one instrument is necessary, that it is in the nature of a conviction, to be construed in the same manner, and that it comes within the operation of the stat. 11 & 12 Vict. c. 43 (*o*).

Statutory forms of convictions.

In order to simplify the task of drawing up convictions, many of the modern penal acts previously to the passing of the stat. 11 & 12 Vict. c. 43, provided certain compendious forms, which, though given as models, were for the most part directory only (*p*), and intended to assist the magistrate in the performance of his duty; there being usually some such words as, "that the justice be authorized or empowered to draw up the conviction *in the form or to the effect* following, that is to say," &c. In some cases,

convictions, but between interlocutory orders, *e. g.* for the payment of money, which are to be enforced, in case of disobedience, by summons, inquiry, conviction and warrant, and convictions immediately interfering with rights secured by the general law of the land, from which they materially and obviously differ; *R. v. Preston*, 12 Q. B. 816, 825; *R. v. Stainforth*, 11 Q. B. 66, 75. As to the importance of the distinction between orders and convictions in regulating the admissibility of the testimony of the defendant and his wife, and the admissibility in evidence of unstamped documents, see *ante*, pp. 108, 112.

(*n*) And the previous acts on the same subject, 20 Geo. 2, c. 19; 6 Geo. 3, c. 25.

(*o*) *Lindsay v. Leigh*, 11 Q. B. 455; *Re Geswood*, 2 El. & Bl. 952; *Bailey's case*, 3 El. & Bl. 607; *Re Hammond*, 9 Q. B. 92; and see Appendix, "Master and Servant." Mr. Smith, in his Treatise on the Law of Master and Servant, p. 307, n. (*x*), expresses an opinion that since 11 & 12 Vict. c. 43, s. 14, the conviction in such case no longer forms part of the commitment.

(*p*) As to the distinction between essential provisions in statutes and such as are merely directory, see *ante*, p. 35, n. (*h*); see also instances of pleading forms being given only as examples and variance not material, though words "or to the like effect" omitted. *Bacon v. Ashton*, 5 Dowl. 94; *Smith v. Wedderburne*, 4 D. & L. 297.

however, the form was peremptorily prescribed, and must have been exactly followed.

11 & 12 Vict.  
c. 43.

By 11 & 12 Vict. c. 43, s. 17, it is enacted, that "it shall be lawful" for the justices to draw up their conviction or order in such one of the forms in the schedule as shall be applicable to the case or "to the like effect" (*q*). The forms of convictions referred to contain simply the charge adjudicated upon, and the judgment of forfeiture or corporeal punishment and the disposition of the penalty, if pecuniary (*r*). It is therefore much shorter and less open to objections than the general form previously in use under 3 Geo. 4, c. 23 (now repealed (*s*)), which consisted of the following parts:—1. The information. 2. The summons and appearance or default of the defendant; with his confession or denial and defence. 3. The evidence. 4. The adjudication.

The form given by 11 & 12 Vict. c. 43, is applicable to all previous penal statutes (that is, statutes passed before the 2nd of October, 1848), whether they contain particular forms of convictions or orders or not, and to all subsequent statutes which do not contain particular forms of convictions or orders (*t*). Thus, a conviction under the Game Acts (1 & 2 Will. 4, c. 32, and 5 & 6 Will. 4, c. 20), adjudging the penalty to be "paid and applied according to law," in pursuance of the forms 1 and 2 given in the schedule to 11 & 12 Vict. c. 43, was held to be valid, although the Game Act provides that one moiety shall be paid to the informer and the other shall go to the overseers of the poor (*u*).

In the use of statutory forms in general, it will be ex-

(*q*) See 11 & 12 Vict. c. 43, Schedules 1—3; see also s. 32. The whole of the form is set forth, and the several parts are considered, in the third chapter, *post*, p. 184; and the sufficiency of a conviction, which follows the statutory form, *post*, p. 169.

(*r*) See *post*, Chapter III., Sect. I. p. 184.

(*s*) By 11 & 12 Vict. c. 43, s. 36.

(*t*) 11 & 12 Vict. c. 43, s. 17. See *Ex parte Allison*, 10 Exch. 561, and *ante*, p. 59.

(*u*) *R. v. Hyde*, 16 Jur. 337; 21 L. J., M. C. 94, overruling *Ex parte Hyde*, 14 Jur. 803; see also *R. v. Johnson*, 8 Q. B. 102; *Re Boothroyd*, 15 M. & W. 1; *R. v. Seale*, 8 East, 568; *R. v. Helps*, 3 M. & S. 331; *R. v. Priest*, 6 T. R. 538.

pedient to attend to the following points, which will be more fully illustrated in the sequel; *first*, that where a blank is left for inserting the offence, the same accuracy is required in the description of it as in other cases (*x*); *secondly*, that although, as is often the case, the act directs, "that no conviction under this act shall be set aside for want of form, or through the mistake of any fact, circumstance or other matter, provided the material facts alleged be proved;" yet, notwithstanding these or the like words, every material fact must be alleged, and the omission, if any, is not aided by reference to such clause (*y*). It deserves to be remarked, that Lord *Kenyon*, in allusion to a provision in the terms just mentioned, says, with regard to the section in the act, that no conviction shall be quashed for want of form, "I confess I am not able to understand it, as applied to proceedings removed into this Court. It enacts, that no conviction on this act (36 Geo. 3, c. 60, s. 11) shall be set aside by any Court for want of form, or through the mistake of any fact, circumstance or other matter whatsoever, provided the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the Court. I can understand it, as far as it respects the proceedings before the sessions by way of appeal. On an appeal, the whole case is gone into; evidence is to be given to support the conviction; and then it may be known whether or no the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the Court. But when the conviction is removed here by *certiorari*, I do not understand how we can inquire into those facts" (*z*). By 11 & 12 Vict. c. 43, s. 32, the several forms in the schedule, or forms to the like effect, are to be deemed good, valid and sufficient in law; and by 12 & 13 Vict. c. 45 (General and Quarter Sessions Procedure Act), s. 7, if any objection is made on account of any omission or mistake in the drawing up of an order

(*x*) *R. v. Hasell*, 13 East, 139.

(*z*) 8 T. R. 540.

(*y*) *R. v. Jukes*, 8 T. R. 536.

or judgment (*a*) by justices, and it is shown to the satisfaction of the Court that sufficient grounds were in proof before the justices to have authorized the drawing up thereof, free from the said omission or mistake, it may be amended. *Thirdly*, if any particular form be prescribed as indispensably necessary, that must be strictly complied with (*b*); but if the act only declares that the magistrate may draw up the conviction *in the form or to the effect* there exemplified, then, provided the conviction contains everything required by the form given, it will not be vitiated by unnecessarily stating more than is required. Thus, on 31 Geo. 3, c. 21, which by sect. 4 directed the conviction to be drawn up according to a form there specified, *or to the effect thereof*, the magistrates having, besides all the requisite particulars, unnecessarily inserted what was not required by the specified form, viz. the information, summons, appearance and names of the witnesses, but not the evidence; it was objected, that the conviction was neither good at common law, for want of setting out the evidence,—nor by the statute, as it did not strictly follow the form there directed; but the objection was overruled: because, it was held, that, as the conviction contained all that the form required, it was not invalidated by stating what was unnecessary (*c*).

Superfluous  
facts.

Surplusage  
in general.

This last observation leads us to take notice of a general maxim applicable to convictions in common with all other legal forms, viz. that any defect in the manner of stating that which is in itself surplusage, and might be omitted altogether, does not vitiate the rest which is sound. An example of this maxim is found in the case last cited, and is confirmed by what was ruled in the case of a conviction on the Conventicle Act, 22 Car. 2, c. 1, in which some of the exceptions introduced by a later act, and not necessary

(*a*) It seems that a conviction comes within this term; see *post*, "Appeal" and "Certiorari."

(*b*) *R. v. Jeffries*, 4 T. R. 769, per Lord Kenyon.

(*c*) *R. v. Jeffries*, 4 T. R. 768;

and see *R. v. Priest*, 6 T. R. 539;

*Charter v. Greame*, 13 Q. B. 227;

*Stamp v. Sweetland*, 8 Q. B. 23;

*Attorney-General v. Le Revert*, 6 M. & W. 405.

to have been noticed at all, were defectively negatived; notwithstanding which, the conviction was held to be good, the unnecessary reference to those exceptions being rejected altogether as surplusage (*d*). Thus also, where a conviction and penalty was stated to be for breaking and entering a park, and chasing a deer, founded upon a statute which mentioned only chasing deer, without any reference to the offence of breaking and entering the park,—it was adjudged, that the conviction was good for that offence which was contained in the act, though it also embraced another fact which was not punishable (*e*).

Under this article may also be noticed, that an impossible or incongruous date, if the conviction be complete without it, may be rejected as surplusage, and will not hurt (*f*).

Impossible date.

*Fourthly.* In general it is sufficient, as it is safer, to follow the statutory form (*g*), and where it was as follows,—“the defendant is convicted before, &c., for that he, &c. [*here state the offence proved*],” it was held unnecessary to state whether it was proved by view, confession or witnesses, although the act gave the justice power to convict only on view, confession or the oath of a witness (*h*). In some cases, however, the form must be altered in order to bring the description of the offence within the statute on which it is founded (*i*), for it is a rule that where a statute gives a form of conviction not fully describing the offence, the conviction nevertheless must fully describe it. In that part, however, which awards the penalty or the like, the form may be followed, even although it does not strictly comply with the requirements of the act (*k*). This was held in a case where the part awarding the penalty following the form

Departure from statutory form.

(*d*) *R. v. Hall*, 1 T. R. 320.

(*e*) *R. v. Drake*, 2 Sh. 489; and *R. v. Huntley*, 29 L. J., M. C. 70.

(*f*) *R. v. Pictou*, 2 East, 196.

(*g*) *Wray v. Toke*, 12 Q. B. 492; *Stamp v. Sweetland*, 8 Q. B. 22; *R. v. Wilcock*, 7 Q. R. 333; *Barnes v. White*, 1 C. B. 192.

(*h*) *Nixon v. Nanney*, 1 Q. B. 747; and see *R. v. Jones*, 12 A. & E. 684, and *R. v. Recorder of King's Lynn*,

3 D. & L. 725; 15 L. J., M. C. 93.

The above form is the same in respect of the words cited from it as in 11 & 12 Vict. c. 43.

(*i*) See *post*, Chapter III., Sect. I.

(*k*) *R. v. Johnson*, 8 Q. B. 102; see also *Barnes v. White*, 1 C. B. 192; *R. v. Wilcock*, 7 Q. B. 317; *Re Peerless*, 1 Q. B. 143; *R. v. Walsh*, 1 A. & E. 481; *Kite and Lane's case*, 1 B. & C. 101.

did not show who was the informer, to whom by the act part of the penalty was given (*l*). On the other hand, a commitment under the Pilot Act (6 Geo. 4, c. 125, s. 70) was held to be defective for not alleging the offer of his services by a licensed pilot to have been made to the defendant or in his presence, although the offer was stated in the words of the statute (*m*). Such alterations also as are requisite to render the form applicable to the special circumstances of the case may be made, and indeed in all cases, if the form is substantially pursued, or if equivalent language be used, it is no objection that it has not been followed verbatim (*n*). Thus the form in the schedule to 8 & 9 Vict. c. 86 (relating to the customs), though in its terms applicable only to an information before two justices, may be altered so as to render it applicable to informations laid before one justice only, conformably to another section of the act (*o*); and in a conviction under the Vagrant Act (5 Geo. 4, c. 83) the omission of the word "part," in setting out the title of an act, was held not to be a fatal variance, although the form given by the statute (sect. 17) required the title to be inserted (*p*).

In the latest case (*q*) in which this matter was discussed, *Pollock, C. B.*, said:—"Where, owing to some insignificant variation, the title of an act of parliament is not correctly set forth, but it is stated with so much clearness

(*l*) *R. v. Johnson*, *supra*; and now, as we have seen, by 11 & 12 Vict. c. 43, the penalty is in all cases directed in the conviction "to be paid and applied according to law." See *R. v. Hyde*, *ante*, p. 166, *n. (u)*.

(*m*) *R. v. Chaney*, 6 Dowl. 281; *Chaney v. Payne*, 1 Q. B. 712.

(*n*) *Re Boothroyd*, 15 M. & W. 1; *Stamp v. Sweetland*, 8 Q. B. 22; *Barnes v. White*, *supra*.

(*o*) *R. v. JJ. Harwich*, 13 Q. B. 237.

(*p*) *Nixon v. Nanney*, 1 Q. B. 747. A misrecital of the title of a statute in a penal action does not hurt; *Chance v. Adams*, 1 Ld. Raym.

77: see remarks on in 1 Q. B. 749' *n. (d)*. In *Chance v. Adams* it was said by the Court, "the title of the act is but a new usage, begun about 11 Hen. VII. and is no part of the act, and therefore it is but surplusage, and misrecital shall not vitiate, but the misrecital of the purview and enacting part always vitiated." See also upon this point, as well as upon the effect of a wrong date being assigned to one statute by another statute, *R. v. Wilcock*, 7 Q. B. 317, 329, 333; *Re Boothroyd*, 15 M. & W. 1.

(*q*) *R. v. Westley*, 1 Bell, C. C. 193; 29 L. J., M. C. 35.

and sufficient accuracy, that there can be no possible doubt in the mind of the judges what is the act referred to by the title indicated, I, for one, notwithstanding the cases cited, sitting in this court, as a Court of Appeal, am prepared to hold that the failure to set it out perfectly furnishes no ground of objection, and I am not prepared to apply the doctrine which has been laid down in those cases."

The particular rules applicable to the distinct parts of a conviction, and to the certainty required in the framing of it, will be more fully explained in a subsequent chapter (r), but it may be expedient to notice in this place certain rules relating generally to its form and qualities.

A conviction ought to be in words and figures at length.

By analogy to common law proceedings of record, in which each step in the cause is supposed to be entered upon the record at the time it takes place, it was formerly held, with great strictness, that a conviction must regularly state all the judicial proceedings before the magistrate in the *present* tense; and many convictions have been quashed for not conforming to that rule (s). But modern decisions relaxed this rule; and it was admitted, that those judicial acts which took place prior to the date of the judgment and conviction, when they were set forth in the conviction, might and ought to be stated as of the time *past*. Thus a conviction stated, "that on the *second* day of *March*, *R.B.* (the informer) *came* &c., and now on this *sixth* day of *March* *came* the said *S. H.* (the defendant), &c., and the said *S. H.*, now here, being required to answer, &c., *confesseth* the offence:" dated the 6th day of *March*. The objection, that the information and appearance should have been in the present tense, was overruled (t).

General qualities of a conviction.

When the *past* tense may be used.

(r) *Post*, Chapter III.

(s) In *R. v. Roberts*, 2 Ld. Raym. 1376; 1 Stra. 698, *præstitit sacramentum*, instead of *præstat*, was held bad. So, in *R. v. Landen*, 1 Stra. 443, a conviction for a forcible entry on view was quashed, because it set

forth the view in the past tense, *accessimus et vidimus*.

(t) *R. v. Hall*, 1 T. R. 320. So, in an order of removal, the words "we have adjudged" were held to be sufficient. *R. v. St. Nicholas, Leicester*, 3 A. & E. 79.

Judgment in  
present tense.

The judgment itself, however (as in the general form given by 11 & 12 Vict. c. 43), is properly to be recorded in the present tense, agreeably to what is laid down by Lord C. J. *Hale* as a rule, in stating the proceedings of all inferior Courts, viz., that the acts of the Court (by which is probably understood the judgment) ought to be in the present tense, but the acts of the parties may be in the past, as *venit et protulit hic in curiâ quandam querelam suam* (u).

General quali-  
ties.

The general qualities of a conviction in substance are, first, that it be full and correct; and, secondly, as the whole jurisdiction in summary proceedings is founded upon and solely derived from special acts of parliament, it is fundamentally required, in a conviction for any offence, that the directions of the particular statute relative to that offence should appear upon the face of it to have been substantially complied with; both as regards the subject-matter of the offence being clearly brought within the meaning of the act, and also the final judgment (x). And if the charge falls short of the necessary legal description of the offence, the omission is not cured by any allegations of its being done *unlawfully*, or *fraudulently*, or the like; or by stating that it was *against the form of the statute* (y); for the last allegation is no more than a legal inference, which must be supported by the premises (z).

Certainty.

Another indispensable property of a conviction is *certainty*. But as there will be occasion to illustrate this more particularly afterwards, it may suffice at present to

(u) *Hall v. Clarke*, 1 Mod. 81.

(x) *Jones*, 139, 170; *Cole's case*, *Jenkins*, 174; *Show*, 48; *R. v. Llewellyn*, Comb. 439.

(y) *R. v. Jukes*, 8 T. R. 536; *R. v. Jarvis*, 1 Burr. 148; see *Attorney-General v. Le Revert*, 6 M. & W. 405; see *post*, p. 176, n.(s).

(z) *Anon.* Dy. 363; *Colborne v. Stockdale*, 1 Stra. 493; and see *Ex parte Aldridge*, 4 D. & R. 83; 2 D. & R. Mag. Ca. 170; *Re Greenwood*, 2 El. & Bl. 952; 23 L. J., M. C. 38, S. C.; *Fletcher v. Cal-*

*throp*, 6 Q. B. 880, 889; *R. v. Lewis*, 8 Ad. & E. 888; *R. v. Martin*, 8 Ad. & E. 481, 486; *R. v. Seward*, 1 Id. 706; *R. v. Rowlands and others*, 17 Q. B. 671; 2 Den. C. C. 364; 21 L. J., M. C. 81; 16 Jur. 268, S. C.; see 12 & 13 Vict. c. 45, s. 7. So the word "duly" is of no avail, except in the description of mere inducement; see *R. v. Bidwell*, 1 Den. C. C. 222; 1 Chit. on Plead. (7th ed.) p. 259; 1 Burn's, J., 973; *R. v. Keighley*, 8 Q. B. 877; 15 L. J., M. C. 102.



observe, that the same rule holds true with equal strictness in convictions as in indictments, viz., that the charge should be positive and certain, in order that the defendant may be protected from a second accusation for the same fact (*a*); and in order also that the judgment may appear appropriate to the offence (*b*). An offence therefore cannot be charged *disjunctively*, or in the alternative, in a conviction, though it may perhaps be so in an order (*c*). Thus, where an information on 48 Geo. 3, c. 143, alleged that the defendant sold beer *or* ale, without an excise licence, the court held it bad, and quashed the conviction, which showed that the defendant had sold ale only (*d*). So where a defendant was convicted on the Smuggling Act (6 Geo. 4, c. 108, s. 49), for being on board a boat liable to forfeiture by sect. 3, for having casks attached thereto, "of the description used, *or* intended to be used, for the smuggling of spirits," the Court there also quashed the conviction for duplicity and uncertainty (*e*).

Though, in general, it may be sufficient to state the fact in the words of the act of parliament (*f*), yet it is not always safe merely to convey the description of the offence in those words; for where the statute describes an offence in such general terms as will embrace a variety of circumstances, a general description, though pursuant to the words of the act, is insufficient (*g*); unless the circumstances be set out with time, place, number, &c. Also, if the offence be such only *sub modo*, the offender must appear to be

Pursuing the words of the statute.

(*a*) 2 Stra. 900.

(*b*) *Vide* Hawk. C. P. B. II. c. 25, s. 59 (8th ed. by Curwood). There were formerly also two other reasons which do not now apply, namely, that the defendant might see by the information (afterwards set out in the conviction) how to direct his defence, and that the evidence (also set out in the conviction) might be seen by the Court to support the charge.

(*c*) *R. v. Middlehurst*, 1 Burr.

399; 1 Salk. 372; 2 Hawk. c. 25, s. 59.

(*d*) *R. v. North*, 6 D. & R. 143.

(*e*) *R. v. Pain*, 7 D. & R. 678; 3 D. & R. Mag. Ca. 517; *S. P., R. v. Morley*, 1 Y. & J. 221.

(*f*) *R. v. Speed*, 1 Ld. Raym. 583, per Holt, C. J.; *Davies v. Nest*, 6 C. & P. 167; *post*, Chapter III., Sect. I.

(*g*) *R. v. Jarvis*, 1 Burr. 152; 1 Stra. 494, 495; 2 Hawk. c. 25, s. 11; see *R. v. Gray*, 33 L. J., M. C. 78.

within the penal conditions specified; and consequently all those modifying or exempting circumstances which are enacted in the same clause with the offence itself, and the absence of which is a constituent part of the crime, must be expressly noticed (*h*). Indeed, in the opinion of Mr. Serjeant *Hawkins*, that rule should extend even to the provisos introduced by distinct clauses (*i*): but the more numerous authorities only carry it to those which exist in the enacting clause (*k*).

Intendment.

Another maxim is, that all the facts necessary to support the proceeding be expressly alleged, and not left to be gathered by inference or intendment. For example, in a conviction for having concealed brewing vessels, the deposition, which was stated on the face of the conviction, appeared to be taken on a day subsequent to the information, and made the witness state, that the defendant *now has* concealed vessels, &c.; and the conviction was quashed, because it should have appeared that he had them at the time of the information; for, though the words might be made to imply as much, yet Lord C. J. *Holt* said, a conviction must be certain and not taken upon collection (*l*).

So, upon a conviction under the 11 Geo. 2, c. 19, for a fraudulent removal of goods to avoid a distress, it was held that, as the justices have no jurisdiction except where one party is *landlord* and the other *tenant*, it must appear upon the face of their order, that the party removing the goods was *tenant*; and that it cannot be supplied by intendment (*m*).

An order of justices, also, requiring a party to pay money or do any other act, must expressly allege every material

(*h*) *Jones v. Axen*, 1 Ld. Raym. 120; Stra. 1101; 1 T. R. 144; *R. v. Marsh*, 4 D. & R. 260; 2 D. & R. Mag. Ca. 182; 2 B. & C. 717; *Fletcher v. Calthrop*, 6 Q. B. 880.

(*i*) 2 Hawk. c. 25, s. 113.

(*k*) Vide *ante*, pp. 121, 124; *post*, Chapter III., Sect. I.

(*l*) *R. v. Fuller*, 1 Ld. Raym. 510; and see *R. v. Baines*, 2 Id. 1265, 1269; *Fletcher v. Calthrop*, 6 Q. B. 880, 890; *R. v. JJ. Cheshire*, 3 D. & L. 337; 15 L. J., M. C. 4, n. (1).

(*m*) *R. v. Davis*, 5 B. & Adol. 551; 2 Nev. & M. 349.

fact on which the jurisdiction of the justices is founded. Thus, an order requiring the officer of a friendly society to pay money to a member must expressly find that such party is a member entitled to the money, and that the party on whom the order is made is, at the time, an officer of the society. The mere direction of the order to *D.*, "steward of the society," is not sufficient, nor the recital of a complaint on oath in the conviction, which states him to be so. Neither does the order show the applicant to be a member, and entitled to the money, by reciting that he made complaint upon oath, in which complaint he stated himself to be a member, and the money to be due; although the order may afterwards direct the money "so due and owing as aforesaid" to be paid (*n*).

But though equal certainty, and in some cases even more particularity, be required in convictions than in indictments, with regard to the statement of the facts which constitute the offence, yet the same legal nicety and formality of expression, which before the stat. 14 & 15 Vict. c. 100, was indispensable in indictments, was not necessary in summary proceedings. Lord C. J. *Holt*, though he seems to have leaned towards a strict examination of summary proceedings, says, that "in convictions by justices of peace in a summary way, where the ancient course by indictment, &c. is dispensed with, the Court may more easily dispense with *forms*; and it is sufficient for justices, in the description of the offence, to pursue the words of the statute, and they are not confined to the legal forms requisite in indictments for offences by common law: all that is necessary is, to show such a fact as is within the description of the statute, and to describe it as the statute wills" (*o*). It is evident, however, from the context, that

Technical words unnecessary.

(*n*) *Day v. King*, 5 Adol. & E. 359.

(*o*) *R. v. Chandler*, 1 Ld. Raym. 581, 583; 1 Salk. 378; *R. v. Marsh*,

4 D. & R. 260; 2 D. & R. Mag. Ca. 182; 2 B. & C. 717. See *R. v. Lewis*, 8 A. & E. 887; and see an instance of an indictment for a

this language refers only to those *technical* phrases, or forms of pleading, to which indictments were tied down. And this appears to be Mr. J. Buller's view of it, when he says, "that the Court, in considering convictions, is always strict in two or three points: first, that a jurisdiction is shown by a person convicting; secondly, that the party has been summoned; thirdly, that the case is duly made out in evidence: but the Court has not been strict in the technical words of them; and I know of no case," he observes, "which says that summary convictions shall be drawn in any precise form" (*p*).

*Contra pacem.*

Therefore the fact need not be charged with the words "*against the peace* of the queen" (*q*). This indeed seems to be unnecessary, for the reasons suggested by the Attorney-General (Sir E. Northey) in the case of *Rex v. Chipp* (*r*), viz., that these prosecutions are not by the king, and he can have no fine upon them for the breach of his peace.

"Unlawfully."

Neither is the omission of the words "*unlawfully*" or "Knowingly." "*knowingly*" any objection, unless either of these words be distinctly used in the act as part of the description of the offence (*s*).

conspiracy to commit certain acts which were the subject of summary conviction, and where it was held sufficient to pursue the language of the statute, *R. v. Rowlands and others*, 17 Q. B. 671; 2 Den. C. C. 364; 16 Jur. 268; 21 L. J., M. C. 81.

(*p*) *R. v. Green*, Cald. 391.

(*q*) *R. v. Chandler*, 1 Ld. Raym. 581. This allegation may now be omitted from indictments, 14 & 15 Vict. c. 100, s. 24.

(*r*) 2 Str. 711.

(*s*) See *R. v. Chipp*, *supra*. But under the Pilot Act it was held necessary to aver knowledge, although the statute does not in terms make it necessary; *Chaney v. Payne*, 1 Q. B. 712. The insertion of these words will not assist allegations in other respects deficient. See *Fletcher v. Calthrop*, 6 Q. B. 887, 889, and *R. v. Mallinson*, 2 Burr. 679; see also

*R. v. Speed*, 1 Ld. Raym. 583; *R. v. Marsh*, 2 B. & C. 717; 4 D. & R. 266; 3 D. & R. Mag. Ca. 182; and *ante*, p. 172. See where such words essential, *Carpenter v. Mason*, 12 A. & E. 629; *R. v. JJ. Radnorsh.*, 9 Dowl. 90; see also as to terms, "unlawfully," *Taylor v. Newman*, 4 B. & S. 89; 32 L. J., M. C. 188; "wilfully and maliciously," *Charter v. Greame*, 13 Q. B. 226; "maliciously," *Stevenson v. Newnham*, 13 C. B. 285; "wilfully," *R. v. Bent*, 1 Den. C. C. 157, 159; *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 85; *Id.* 90; *Hudson v. M' Rae*, 33 *Id.* 65; "wilfully and corruptly" in perjury, *R. v. Stevens*, 5 B. & C. 246; "feloniously," *Reg. v. Gray*, 33 L. J., M. C. 78; and further upon this subject, Archbold's Crim. Plead., pp. 51—53 (11th edit.); and *post*, Chapter III., Sect. I.

It is a general rule that a conviction, being an entire judgment, must be good throughout; for if any material part be faulty it vitiates the whole (*t*). An order, on the other hand, may be quashed in part, if it be sufficiently divisible (*u*). Entirety of conviction.

(*t*) *R. v. Catherall*, 2 Str. 900; *tiorari*," and *R. v. Robinson*, 17 Q. B. 466; *ante*, p. 160.  
1 T. R. 249; and *ante*, p. 160.

(*u*) See *post*, "Judgment," "Cer-

## CHAPTER II.

## OF THE CONSTRUCTION OF CONVICTIONS.

IT may be proper in this place to offer a few remarks on the principles adopted by the Courts in the construction of penal convictions, more especially as expressions are occasionally found in the cases which have come under their adjudication tending to a notion of greater strictness being exercised in the examination of these than of any other criminal proceedings, and calculated to represent the summary jurisdiction, from which they originate, as deserving the peculiar vigilance and jealousy of the Superior Courts. It is an unquestionable principle of the common law, in the construction of penal statutes, however executed, that they shall be taken favourably for them upon whom the penalty is inflicted (*a*); and the judges, at different periods, may seem to have thought the application of this maxim more particularly requisite in proceedings of a summary kind. Lord C. J. *Holt* is represented upon one occasion as expressing himself thus in the case of a conviction on a penal statute: "Everybody," says he, "knows that this, being a penal law, ought, by equity and reason, to be construed according to the letter, and no further. That it is penal is plain from the penalty; and, what is highly so, the defendant is put to a summary trial different from *magna charta*; for it is a fundamental privilege of an Englishman to be tried by a jury. Then, where a penalty is inflicted, and a different manner of trial from *magna charta* instituted, and the party offending, instead of being tried by his neighbours in a court of justice, shall be convicted by a single justice in a private chamber, upon testimony of one witness, I fain would know, if, on the consideration of such

(*a*) Plow. 17, 206.

a law, we ought not to adhere to the letter, without carrying the words farther than the natural sense" (b). Similar observations upon the nature of summary proceedings, as taking away the right of being tried *per pares*, are found in the mouth of the same judge on another occasion (c). Chief Justice *Best* has expressed like opinions:—"An act of parliament" (d), he said, "which takes away the right of trial by jury, and abridges the liberty of the subject, ought to receive the strictest construction; nothing should be holden to come under its operation that is not expressly within the letter and spirit of the act." And on a recent occasion (e), Lord *Denman* said,—“Proceedings in cases of this nature, which are to deprive a man of his freedom in a summary way, without letting him be tried by his peers, are always construed strictly and never supplied by intendment of matter, which does not appear on the face of them.” These sentiments agree with the opinion occasionally delivered from the bench, intimating, that the Court ought to hold a tight hand over these convictions (f). Mr. Serjeant *Hawkins* likewise assigns, as a reason for requiring greater certainty in them than in indictments, that the defendant has no opportunity of pleading to these summary forms (g). This reason is adopted by Lord *Kenyon* (h), and by Lord *Mansfield* (i), who says, “convictions must be taken strictly; and it is reasonable they should be so, because they must be taken to be true against the defendant, and therefore ought to be construed with strictness.” It is also affirmed by Mr. *J. Ashhurst* (k), “that the construction ought to be more strict upon convictions, than upon indictments; and the reason is, because the jurisdiction is summary.”

(b) *R. v. Whistler*, Holt, 215.

*per curiam*, *R. v. Daman*, 2 B. & Ald. 378.

(c) *R. v. Chandler*, 1 Salk. 378;

(g) 2 Hawk. c. 25, s. 13.

*R. v. Peckham*, Comb. 439.

(d) *Looker v. Halcomb*, 4 Bing. 188.

(h) *R. v. Jukes*, 8 T. R. 544.

(e) *Fletcher v. Calthrop*, 6 Q. B. 880, 891.

(i) *R. v. Little*, 1 Burr. 613.

(f) *R. v. Corden*, 4 Burr. 2281;

(k) *R. v. Green*, Cald. 391; and see *R. v. Pain*, 7 D. & R. 678; 3 D. & R. Mag. Cas. 517, per Abbott, C. J.

On the other hand, however, there are not wanting examples of a less rigid construction, supported by opinions, which almost intimate a disapprobation of that strictness inculcated in those we have already noticed. Among these may be remarked what is said on another occasion by the same learned judge whose opinion has just been quoted, Mr. J. *Ashhurst*. "As to the principle drawn from the old cases, that the Court will be *astute* in discovering defects in convictions before summary jurisdictions, there seems to be no reason for it. Whether it was expedient that these jurisdictions should have been erected, was a matter for the consideration of the legislature; but, as long as they exist, we ought to go all reasonable lengths to support the determinations. Therefore, in whatever light they may have formerly been viewed, the country is now convinced that it derives considerable advantage from the exercise of the powers delegated to justices of the peace; and in modern times they have received every support from Courts of Law" (*l*). Many examples likewise occur in the following pages, of favourable intendments made in support of convictions, which afford proofs that the rigid maxims expressed on other occasions are not to be taken literally.

In order to reconcile opinions and cases, which upon first view seem to be at variance with each other, a distinction has been suggested by a very judicious writer, which appears to be warranted by closer examination of the authorities. A conviction, it must be recollected, formerly contained a memorial, both of the charge and of the judicial steps taken by the convicting magistrate. The question of the magistrate's *authority*, as collected from the record, was distinct from that of the *regularity* of his proceedings: and though nothing can be intended to aid or extend an extraordinary and circumscribed jurisdiction (*m*), yet something

(*l*) 2 T. R. 18; *ante*, p. 159, n. (*h*).

(*m*) See *ante*, pp. 16, 174; *Ex parte Martin*, 9 D. & Rd. 65; 6 B. &

C. 80; *Kitchen v. Shaw*, 1 Nev. & P. 791; and see *Taylor v. Clemson*, 11 Cl. & Fin. 610.



may reasonably be presumed for the regularity of proceedings legally commenced. Therefore, says Mr. *Boscawen*, though the Court will not admit a summary, and (if one may still use the expression) an unconstitutional jurisdiction, unless the case in which it is exercised be literally the same as described by the statute,—yet, the magistrate once appearing to be duly authorized, they will not presume against the regularity and justice of his proceedings, if he has stated them with but a reasonable degree of accuracy (*n*). Agreeably to this idea, the cases which carry the doctrine of strictness the farthest will be found to relate to points affecting the *jurisdiction*: such are—the style and title of the magistrate (*o*); the date (*p*) and locality (*q*) of the fact alleged; and, more especially, the description of the offence (*r*), in the essential parts of which no omission or defect can be supplied by implication. On the other hand, those cases which allow of a favourable intendment are mostly such as regard only the form of proceeding. Lord *Holt* himself, though he describes this summary jurisdiction as newly set up, and not known to the law before, and gives that as a reason why the statute in each case must appear to be strictly pursued, allows “that the magistrates need not set forth every step of their proceedings, but so much that it may appear to be done, *debito modo*, in point of time,” &c. (*s*). And to the same purport is the declaration of the Court in one case (*t*), “that where the legislature has given a power, the Court will presume the justices to have followed that power.” This consideration will serve to explain many of those instances that will be subsequently noticed, where the Courts have apparently allowed considerable latitude of presumption to support convictions (*u*).

It is, however, to be remarked, as a proper caution in

(*n*) Bosc. 10.

(*o*) Stra. 261, *post*, p. 187.

(*p*) 1 Ld. Ray. 509, 510, *post*, p.

189.

(*q*) 13 East, 141, *post*, p. 192.

(*r*) 1 Burr. 613; 4 Burr. 2282;

1 T. R. 24; 1 East, 649, &c., *post*, p. 193.

(*s*) *R. v. Peckham*, Comb. 439.

(*t*) 1 Str. 46.

(*u*) 2 Ld. Ray. 1375; 2 Stra.

1240; 2 T. R. 23; 3 Burr. 1786.

Jurisdiction  
must appear.

drawing any general conclusions from opinions or *dicta* which seem to admit of license in the wording of convictions, that those expressions, when examined with the context, will be found to apply, not to the substance or contents of the conviction, but only to the use of certain technical forms which may be dispensed with, consistently with the utmost precision in the statement of facts (*x*).

The safest rule, perhaps, that can be laid down upon this subject is in the words of Lord *Ellenborough*, "that the Court can intend nothing in favour of convictions, and will intend nothing against them" (*y*). It must also be borne in mind that jurisdiction must always appear on the face of proceedings before magistrates (*z*).

The rule of construction applicable to proceedings of inferior, as distinguished from those of superior, jurisdictions, was thus stated by Mr. Baron *Parke*, when delivering the judgment of the Court of Exchequer Chamber in *Gossett v. Howard* (*a*):—"In the case of special authorities given by statutes to justices or others acting out of the ordinary course of the common law, the instruments by which they act, whether warrants to arrest, commitments, or orders, or convictions, or inquisitions, ought, according to the course of decisions, to show their authority on the face of them by direct averment or reasonable intendment. Not so the process of superior Courts acting by the authority of the common law. In the argument of the case of *Peacock v. Bell* (*b*), the rule as to pleading is well

(*x*) *Post*, Chapter III.

(*y*) *R. v. Hazell*, 13 East, 141.

(*z*) *R. v. Fuller*, 2 D. & L. 98, 101, where *Coleridge*, J., said, "There is no rule more inflexible than the one which requires that sufficient shall appear on the face of the proceedings before magistrates to show that they have acted within their jurisdiction." See also *Hollingworth v. Palmer*, 4 Exch. 267; *R. v. Totness*, 11 Q. B. 80; *R. v. Manchester and Leeds Railway Company*, 8 A. & E. 413. No pre-

sumption from the manner of describing the fact can supply the omission of a direct averment of its being within the requisite jurisdiction. *R. v. Edwards*, 1 East, 278, and see *R. v. St. George, Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49.

(*a*) 10 Q. B. 411, 452. As to the construction of penal statutes in general, see *R. v. Sillim* (*The Alexandra Case*), 33 L. J., Exch. 92, 105, 117.

(*b*) 1 Saund. 74.

expressed, thus:—‘The rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so; nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged.’”

We shall conclude this discussion with one further observation, which is, that the Court will not presume injustice or partiality in magistrates(c); but gives them credit for the truth of the facts stated, subject to the peril attending the wilful abuse of that credit by a false statement(d).

(c) *Skin.* 123.

*Carew*, 5 D. & R. 558; 2 D. & R.

(d) 10 Mod. 382; *Basten v.* Mag. Ca. 563; 3 B. & C. 649.

## CHAPTER III.

## OF THE SEVERAL PARTS OF A CONVICTION.

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SECT. 1.—*Of the Formal Commencement and the Statement of Offence.*

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THE general form of conviction given in the schedule to 11 & 12 Vict. c. 43(a) is as follows:—

General form  
of conviction.

to wit. } Be it remembered that on the                      day  
           } of                      in the year of our Lord  
 at        in the said [county], A. B. is convicted before the  
 undersigned [one] of her Majesty's justices of the peace  
 for the said county, for that [he the said A. B., &c.,  
*stating the offence, and the time and place when and where  
 committed*] ; and I adjudge the said A. B. for his said  
 offence to forfeit and pay the sum of                      [*stating  
 the penalty, and also the compensation, if any*], to be  
 paid and applied according to law, and also to pay to  
 the said C. D. the sum of                      for his costs in this behalf;  
 and if the said several sums be not paid forthwith [*or on*  
 or before                      next] I order that the same be levied by

(a) Sched. 1—3, *ante*, pp. 59, 165—169, as to the applicability of this form, and the rules relating to statutory forms in general.

distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress I adjudge the said A. B. to be imprisoned in the [*house of correction at                      in the said county there to be kept to hard labour*] for the space of                      unless the said several sums and all costs and charges of the said distress [*and of the commitment and conveying of the said A. B. to the said house of correction*] shall be sooner paid.

Given under my hand and seal the day and year first above mentioned, at                      in the [*county*] aforesaid.

J. S. (L.S.)

The mention of the county in the margin only denotes in what county the conviction was made, but does not of itself indicate where the offence was committed, so as to supply the want of that allegation, either expressly or by reference, in the body of the conviction (*b*); nor is it of itself sufficient to show that the justices were within the county so mentioned in the margin when they made the conviction, so as to give them jurisdiction, without alleging that they were in such county in the body of the conviction (*c*). The venue is, however, a part of the conviction and may be incorporated with it by words of reference, thus it was held sufficient to state in an order of sessions, that it was made by "justices of the peace in and for the said county," referring to the venue in the margin (*d*).

Marginal venue. Place where conviction or order made.

A conviction or order must appear to be made within the jurisdiction of the magistrate making it. Where

(*b*) *R. v. Austin*, 8 Mod. 309. The same rule formerly prevailed with regard to the venue in indictments, see *R. v. O'Connor*, 5 Q. B. 16; but now by 14 & 15 Vict. c. 100, s. 23, the venue in the margin of indictments shall be taken to be the venue for all the facts stated in the body of such indictments, except where local description is necessary. See *post*, p. 192, as to the place of the offence.

(*c*) *R. v. Totness*, 11 Q. B. 80; *R. v.*

*St. George, Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49; *post*, p. 187.

(*d*) *R. v. Inhabitants of Casterton*, 6 Q. B. 507, and cases cited therein; see also *R. v. Stockton*, 7 Id. 520; *R. v. Inhabitants of St. Paul*, Id. 533; *Jones v. Johnson and another*, 5 Exch. 862; *S. C.* in error, 7 Exch. 452; *R. v. Hodgson*, Id. 915; and see *R. v. Crowan*, 14 Q. B. 221; *Johnson v. Reid*, 6 M. & W. 124; *Hawk. P. C. v. 2*, b. 2, c. 13, s. 23.

the marginal venue to an order of removal was "borough of D.," and the justices were described as "*having jurisdiction within and for the said borough*," it was holden bad, as it did not appear that the order was made *in* the borough (*e*).

Names of the offender and person aggrieved.

If there be several offenders, each must be named. The Court refused to entertain a conviction, in which the persons charged were described as Messrs. *Harrison and Company*, and treated it as a nullity, even against the party named. For, though neither the defendant *Harrison*, nor the other, objected to the conviction on that ground, Lord *Kenyon* said, the Court were bound to take care that summary proceedings before magistrates were regularly conducted, whether the parties objected to them or not; and, in that case, the Court could not tell upon the face of the proceedings but that the delinquency of *Harrison's* partners, who were not before the Court, might have been imputed to him (*e*).

A provision is, however, sometimes made by statute, where an offender refuses to discover his name. Thus by the General Turnpike Road Act, 3 Geo. 4, c. 126, s. 132, which imposes penalties on the drivers of waggons, &c. misbehaving themselves, if the offender refuses to discover his name, he may be committed to the house of correction for three months, or proceeded against for the penalty, by a description of his person and the offence only, without adding any name or description, but expressing in the proceedings that he refused to discover his name (*f*). Apart, however, from statutory provision, no man is to escape because his name is not known, and if he refuses to disclose it, he may be described as a person whose name is unknown to the magistrates, and identified by some fact; for instance, that he is personally brought before them by a certain constable (*g*).

(*e*) *R. v. Newton Ferrers*, 9 Q. B. 32; see *post*, p. 187.

(*e*) *R. v. Harrison and Company*, 8 T. R. 508.

(*f*) There is a similar clause in the General Highway Act, 6 & 7 Will. 4, c. 50, s. 78.

(*g*) *R. v. —*, R. & R. 489.

In like manner the name of the person or persons aggrieved should be accurately stated if known, and if not known it should be so stated (*h*).

Whilst on the subject of names, it should also be mentioned that several statutes (the most important of which is 7 Geo. 4, c. 64) make provisions in certain cases for the description of owners of property where they are partners, companies, trustees, &c. (*i*).

The justices are not bound by the names contained in the information, but may draw up the conviction with what appear to be the proper ones (*k*).

The name and style of the magistrates by whom the conviction is made must next be set forth, from which it must appear that they are magistrates of the county, borough or place where the offence is afterwards stated to have happened, in order that their jurisdiction may be shown on the face of the proceedings (*l*). Magistrates acting judicially must appear to be acting *in* their jurisdiction as well as for it. "It is a general rule," said Mr. Justice *Wightman* in a late case (*m*), "that all judicial acts exercised by persons, whose judicial authority is limited as to locality, must appear to be done within the locality to which the authority is limited." It is not sufficient, therefore, to describe them as justices *in* the county, without saying *for* the county (*n*), nor to describe them as justices *for* the county, without saying *in* the county, the proper words being "justices *in and for* the county of, &c. (*o*), but an

Name and  
style of jus-  
tices.

(*h*) 2 Hale, 181.

(*i*) See Archbold, Cr. Pl., ch. 1, s. 3.

(*k*) *Whittle v. Frankland*, 2 B. & S. 49; 31 L. J., M. C. 81.

(*l*) *R. v. Johnson*, 1 Str. 261; *R. v. Crowan*, 14 Q. B. 221.

(*m*) *R. v. Totness*, 11 Q. B. 80, 90; and see *R. v. Stainforth*, *Id.* 66, 75; 15 L. J., M. C. 4, n. 1; *R. v. Milner*, 14 *Id.* 157; *R. v. St George, Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49; *ante*, p. 19.

(*n*) *R. v. Dobbyn*, 2 Salk. 473.

(*o*) *R. v. Stockton*, 7 Q. B. 520.

The form of conviction in the schedule to 11 & 12 Vict. c. 43, describes the justices as "for" the county merely, but it shows that they were acting in the county, both by its commencement and conclusion, see the form *ante*, p. 184; and see *R. v. Milner*, 3 D. & L. 128; 14 L. J., M. C. 157. In that case an order of affiliation, made at petty sessions under 7 & 8 Vict. c. 101, recited the application for the summons to have been made to "J. M., one of her majesty's justices of the peace usually acting *in* this divi-

amendment in this respect was made in an order after it had been brought up by *certiorari* to be quashed (*p*). We have seen that it is sufficient to refer to the venue in the margin of the conviction (*q*). So where an order appeared to be made on complaint before two justices "acting in and for the county of Middlesex," and it contained no further statement of the place where it was made, except "Middlesex to wit" in the margin, it was held sufficiently to appear that the complaint and order were made in Middlesex (*r*). It is no objection, that justices are described as *being* justices, &c., without the word *there* being &c., for that is implied (*s*). It is necessary that they should call themselves "justices" (*t*), and also justices of the *peace* (*u*).

Where the statute gives cognizance of the offence to the *next* justice of the county the convicting magistrates should be so described; for no other but the next have any jurisdiction (*x*). But if the act only mention justices *in or near* the place, it is but directory, and they need not be so described in the conviction (*y*): nor, if the statute speaks of justices *acting for the division*, need they be so alleged, for any justice of the county comes within that condition (*z*); but it should be alleged that the meeting was held in and for the division, and that the offence was committed within

sion." The jurisdiction of the justice was held sufficiently to appear, as the words "in" and "for" were used synonymously in the forms in the schedule to that act, see *Re Peerless*, 1 Q. B. 143, 153; *R. v. Inhabitants of St. Paul*, 7 Q. B. 533; and see *R. v. Recorder of King's Lynn*, 3 D. & L. 725; 15 L. J., M. C. 93.

(*p*) *R. v. Hellingley*, 1 El. & El. 749; 28 L. J., M. C. 167.

(*q*) *R. v. Casterton*, *ante*, p. 185.

(*r*) *R. v. Inhabitants of St. Paul*, 7 Q. B. 533, and so in the case of recognizances, *R. v. Hodgson*, 7 Exch. 915.

(*s*) *R. v. Chipp*, 2 Str. 711. So much nicety was formerly thought necessary in the description of the

justice's title and office, that a conviction was quashed because the information was said to be before two justices of our lord the king, to keep his peace in the county of, &c., but omitting the word *assigned*. *Sanders's case*, 1 Saund. 263; but see 2 Barn. 383.

(*t*) *Walton v. Chesterfield*, 5 Mod. 322; *R. v. Woodford*, 1 Bott. 434.

(*u*) See 4 Burn's Justice, pp. 29, 30, tit. "Poor" (29th edition).

(*x*) *Sanders's case*, 1 Saund. 263; Dalton, c. 6.

(*y*) 2 Keb. 559; *ante*, pp. 35, 36.

(*z*) *R. v. Price*, Cald. 305; 3 Bac. Ab. 798, tit. "Justices of Peace;" and see per Patteson, J., in *R. v. Toke*, 8 A. & E. 229, n. (*a*).



it (a). In a recent case, a conviction under the 11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85, was held good, although it did not state that the beer-house was in the division for which the justices acted, that statement not being in the form given by the act. In that case, also, the parish in which the house was stated to be was of the same name as the division, and the Court said they would presume that they were the same (b). So a warrant of commitment in the general form provided by the stat. 11 & 12 Vict. c. 43 (Schedule P.), has been held to be sufficient, without any allegation that the convicting justices were sitting at a place where the petty sessions were usually held, although made and granted under a more recent statute, giving jurisdiction to two justices sitting at such place (c).

Formerly, if one of the convicting justices was required by the statute to be of the *quorum*, a conviction could not be good, unless it was so expressed in the style of the justices; but that objection is now removed by statute 26 Geo. 2, c. 27, which enacts, that no order or the adjudication of justices shall be set aside for that defect (d).

The conviction must likewise specify the time and place of committing the fact complained of. Formerly the time of laying the information, as well as the date of the offence and of the conviction itself, appeared upon the face of the conviction, and the reasons given for requiring such statement were, first, that the magistrate might appear to have proceeded upon a legal charge, which could not be, unless it was brought within a certain time from the commission of the offence, or, according to some statutes, till after a certain number of days had elapsed after the offence committed; and, secondly, that the party might the better

Time of  
offence.

(a) *R. v. Martin*, 2 Q. B. 1037, n. (a); *R. v. Morice*, 2 D. & L. 952.

(b) *Wray v. Toke*, 12 Q. B. 492, 506; *ante*, p. 36.

(c) *Ex parte Allison*, 10 Exch. 561; 24 L. J. (N.S.) M. C. 73; 18 Jur. 1055, S. C. The conviction

was under stat. 16 & 17 Vict. c. 30, relating to aggravated assaults upon women and children; see *ante*, p. 37.

(d) And see 4 Geo. 4, c. 27; and *R. v. Llangian*, 4 B. & S. 249; 32 L. J., M. C. 225; *ante*, p. 38.

defend himself upon a second charge (*e*). The date of laying the information, however, no longer appears on the face of the conviction, nor is it necessary to allege that the information was laid within the specified time (*f*).

It is also settled, that in convictions the precise day need not be named, but that it is sufficiently certain, if the fact be alleged to have happened *between* such a day and such a day, provided the last of the days specified be within the limited time. It may not be easy to assign a reason for the difference in this respect which formerly existed between convictions and indictments; in the latter of which such a mode of pleading was held to be insufficient (*g*) before 14 & 15 Vict. c. 100. The authorities, however, are explicit; and the point is noticed by Mr. Serjeant *Hawkins* as solemnly decided in regard to such convictions, though the contrary is stated by him to be the law in indictments (*h*). The question first arose in a case which came before the Court on the former act of 3 & 4 Will. 3, c. 10, against deer-stealing. That case is reported in several books (*i*), none of which gives the conviction itself, but only the resolution of the Court upon the several points excepted to. The report of *Salheld*, with which the others agree without any material variation, is as follows:—It was agreed, that “*inter* such a day and such a day defendant killed three deer,” is good; for if a day certain were alleged, the informer is not tied up to that. Now, in these cases, he is confined to giving evidence of a killing within these days; so that it is more certain and better for the defendant. Otherwise it is in informations at common law, because every distinct offence creates a new penalty; but, in trespass, a fact may be laid *diversis diebus et vicibus inter* such a day and such a day; because it is not a new action, but an increase of damages.

(*e*) *R. v. Chandler*, 14 East, 272;  
*R. v. Pullen*, 1 Salk. 369; *R. v.*  
*Catherall*, 2 Str. 899.

(*f*) *Wray v. Toke*, 12 Q. B. 492.  
(*g*) 2 Hawk. c. 24, s. 82, 8th ed.

by Curwood.

(*h*) *Id. ib.*

(*i*) *R. v. Chandler*, 1 Salk. 378;  
1 Ld. Raym. 581; Carth. 502; 5  
Mod. 446.

It was further said by the Court, and supported by reference to many precedents, that all the informations in the Exchequer are in this form. And as to the argument derived from the hardship of driving the defendant to give an account of every day during the time specified,—it was answered, that the omission of the particular days is not an inconvenience, because, if he can show an authority for killing so many as are charged upon him in the same, it will drive the prosecutor to prove more; and if he be charged at another time, he may aver that those for which he has been convicted are the same (*k*).

Again, the very same objection was discussed afterwards, upon a conviction under the same act (*l*). The information, as appears by the record filed of *Hilary* Term, 12 Ann., alleged that the defendant committed the fact *between the last day of July and the sixth day of August, and within twelve months before the information*. The evidence was the same. The exception, as we learn from the report (*m*), was, that no certain time was laid for the commission of the crime. The authority of the last cited case, *R. v. Chandler*, was referred to, and considered as a conclusive answer to the objection: and what had been there insisted on was repeated, that it was the constant course of informations in the Exchequer to set forth the time in the same manner. And where the information charged the offence to have been committed on the 5th day of October, and on divers other days and times between that day and the 16th of November, and the conviction stated the offence to have been committed on the 8th of November, it was held to be valid (*n*).

Notwithstanding, however, that these convictions were supported, it is more regular to fix the charge to a certain day, where it can be done.

With reference to the manner of stating it, it may be

(*k*) 1 Ld. Raym. 582.

(*m*) 10 Mod. 248.

(*l*) *R. v. Simpson*, 13 Ann. 10 Mod. 248.

(*n*) *Onley v. Gee*, 30 L. J., M. C. 222.

noted, that an information, set out in the conviction, appearing to be exhibited on the 29th of *May*, 1805, charging the fact *within three months*, to wit, on the 12th of *May now last past*, it was held, that these words “now last past” might, by reason of the accompanying words, “within three months,” refer to the day and not to the month; so as to obviate the objection of the information being out of time, by supposing it to refer to *May*, 1804 (*o*).

Place of  
offence.

On the ground that the magistrate’s jurisdiction is limited in local extent, the *place* where the offence was committed should be stated in the conviction, as well as proved by the evidence, in order that the complaint may appear to be one over which the magistrate’s cognizance extends. The reports of cases applicable to this point, as well as the direction in the statutory form, establish, that the fact which forms the subject of the conviction must appear to have arisen at some place within the jurisdiction of the convicting magistrate (*p*).

As an illustration of this rule reference may be made to a case already cited, in which a warrant, setting forth that the defendant had been convicted before two justices in and for the county of *Kent*, for that he was found on the high seas within one hundred leagues of the coast of the county of *Kent* on board a vessel, from which part of the cargo had been then and there thrown overboard to prevent seizure, was holden bad, upon the ground that the justices could have jurisdiction only by the offence being committed in *Kent*, or by its being committed on the high seas, and the offender being found in or brought to *Kent* (*q*).

The mention of the county in the margin does not, as we have seen, supply the want of an allegation, either expressly or by reference, of the fact being committed in

(*o*) *R. v. Crisp*, 7 East, 389.  
(*p*) See *ante* pp. 26, 118.

(*q*) *Re Peerless*, 1 Q. B. 143;  
*ante*, p. 30.

the county (*r*). But where a place has once been mentioned, as at *B.* in the county of *H.*, it is enough afterwards to say at *B. aforesaid*, without saying in the *county aforesaid*; for it will not be presumed to lie in two counties (*s*). And where a conviction omitted to state in the previous part of it the precise place *where* the offence was committed, but, in awarding the distribution of the penalty, awarded it "to the overseers of *D.* in the said county where the offence was committed," this was held to be sufficient (*t*).

The Court will take notice of the known divisions of the kingdom. For which reason, where an act imposed £100 penalty upon the offence, if committed within the bills of mortality, and £50 if without—it was held to be sufficient, in a conviction for the smaller sum, to allege the fact at *Reading* in the county of *Berks*, without averring it to be without the bills of mortality (*u*). But it seemed to be the opinion of Mr. Justice *Buller*, that if the conviction had been for the higher penalty, it might have been necessary expressly to allege the fact to have been committed within the bills of mortality.

And although the Court will take judicial notice of the general division of the kingdom into counties, it will not take notice of the local situation of places in a county, nor of the distance of one county from another (*x*).

The strictness with which this averment is regarded is exemplified by the following case:—

Strictness as to locality.

This was a conviction on 41 Geo. 3, c. 38 (*y*), against a manufacturer for combining with others to refuse work. The act gives a general form for the conviction, in which it is merely required to state the offence, without anything pointing to the date or place. The offence was in substance

(*r*) *R. v. Austin*, 8 Mod. 309; ante, p. 185.

(*s*) *R. v. Burnaby*, 2 Ld. Raym. 901, 902.

(*t*) *R. v. Weale*, 5 C. & P. 135.

(*u*) *R. v. Vasey*, Bosc. 130. See Taylor Ev. vol. 2, s. 15, p. 25 (4th

edition).

(*x*) *Deybel's case*, 4 B. & A. 243; *Thorne v. Jackson*, 3 C. B. 661.

(*y*) This statute is repealed by 5 Geo. 4, c. 95; and see 1 Deac. Crim. L. 253.

stated in the following manner: viz.—“That the defendant on a certain day (he being then employed by *G. S., &c.*, of *Wallington*, in the county before mentioned, in the trade of a calico-printer, carried on by them at *Wallington* aforesaid), and whilst he was such workman and so employed as aforesaid, refused to work with one *S. B.*, then also employed by *G. S., &c.* in the said manufacture carried on by them at *Wallington* aforesaid.” This conviction was quashed, because it was not expressly averred *where* the refusal was given; so that it did not appear to be within the jurisdiction of the magistrate. Lord *Ellenborough*, in delivering the judgment, observed, that the words *then and there* were not to be exploded altogether, and they had sometimes more meaning than was commonly imagined (z).

Locality not  
supplied by  
intendment.

No presumption, from the manner of describing the fact, can supply the omission of a direct averment of its being within the requisite jurisdiction. A strong instance of the strict application of this rule is found in the following case, which arose upon a conviction on the former statute of 5 Geo. 3, c. 14, s. 3 (a), for killing fish in a private stream. The justices were described as of the county of *Warwick*, in which the conviction was made. The evidence set forth, that the defendant was seen to draw a draught net in the river or stream called *Thame*, “which runneth *between Bromford Forge*, in the parish of *Ashton*, in the county of *Warwick*, and *Castle Bromwich*, in the said parish of *Ashton*, in the said county of *Warwick*.” The conviction was quashed, because the place where the defendant fished was not positively stated to be in the county of *Warwick*, but only between two places situated in that county. The Court said, they could not presume the place itself to be within the jurisdiction of the magistrates. It must expressly so appear; and it did not necessarily

(z) *R. v. Hazell*, 13 East, 142; (a) See now 24 & 25 Vict. c. 96,  
and see *Johnson v. Reid*, 6 M. & W. s. 24.  
124.

follow, that the intermediate course of the stream was in the same county with the two *termini* (b).

To the same effect is the following:—Conviction by the justices of *Middlesex*, for having in the defendant's *custody and possession* a private still, contrary to 19 Geo. 3, c. 50. The deposition contained as follows, viz. that the witness went to the house of the defendant at *Edmonton*, in the county of *Middlesex*, and that he found *in the garden of the said house* a private still just worked off, &c. This was held to be bad, because it did not appear that the garden in which the still was found was in the county of *Middlesex*; for the Court said, the house might be in one county and the garden in another; and it did not therefore appear that the offence was committed within the jurisdiction of the convicting magistrate (c).

Neither was it sufficient, when the evidence appeared on the face of the conviction, that the place could be collected, by intendment, from the adjudication of the magistrate; it must have expressly appeared out of the mouth of the witness. Thus, in a conviction, where the *place* of committing the offence no otherwise appeared than by the justices awarding the penalty in these terms: viz.—“to the poor of the parish of C., in the county of *Kent*, *within which parish the aforesaid offence was committed*,” this was held to be insufficient, for though the magistrates stated themselves in the conviction to be justices of the county of *Kent*, yet the Court said, their jurisdiction (meaning the fact of the offence being within that county, of which they were justices) must appear otherwise than out of their own mouth (d).

We are in the next place to explain the manner of de-

Of describing  
the offence.

(b) *R. v. Edwards*, 1 East, 279, 282.

(c) *R. v. Chandler*, 14 East, 274.

(d) *R. v. Johnson*, 1 Str. 261. The same case is cited in *Barnardiston*, 383, with a difference only as to the county, which is there said to be *Middlesex*, instead of *Kent*. The

point decided is not very perspicuously marked in *Strange*, but is explained by the note in *Barnardiston*, which states it thus: viz., Objection, that the offence does not sufficiently appear in the place where the justices belonged to. It no otherwise appeared that the of-

scribing the *body*, or substance, of the charge itself. The general qualities required in that description have been already adverted to(*e*); but it will now be proper to enter into the illustration of those rules by more particular examples.

Certainty in  
describing the  
offence.

And first, with respect to *certainty* in describing the offence with which the defendant is charged(*f*). A conviction for a pecuniary penalty, upon an information on 3 & 4 Will. 4, c. 53, against a foreigner, for being on board a vessel liable to forfeiture under an act relating to the customs, charged the offence as being committed within a part of the united kingdom, *and within one league of the coast*; but it appearing, that, as to being on board such vessel within one league of the coast of the United Kingdom, the pecuniary penalty was done away with by 4 & 5 Will. 4, c. 13: it was held that the conviction could not be supported, as it did not distinctly show to the defendant which offence was insisted on against him(*g*). So, if a statute gives summary proceedings for various offences specified in several sections, a conviction is bad which leaves it uncertain under which section it took place(*h*). And where a conviction proceeded on a repealed statute, the Court quashed the conviction, although it might have been supported under the Repealing Act, if the justices had professed to proceed under it(*i*). And further, it must be borne in mind, that the conviction must not be for another and a different offence from that charged in the summons, notwithstanding 11 & 12 Vict. c. 43, s. 1(*k*).

So, if a statute specifies the grounds of forfeiture, the conviction must show specifically the *particular* fact which

fence was in *Middlesex* than in the judgment; which was to forfeit a certain penalty to the poor of the parish of *Chelsea*, *infra quam* the offence was committed; and upon this exception the conviction was quashed. The same degree of strictness would probably not be required at the present day.

(*e*) See *ante*, p. 172, *et seq.*

(*f*) *Ante*, p. 172.

(*g*) *R. v. Pereira*, 2 Ad. & E. 375.

(*h*) *Charter v. Greame*, 13 Q. B. 216.

(*i*) *Michell v. Brown*, 1 El. & El. 267; 28 L. J., M. C. 53.

(*k*) *Martin v. Pridgeon*, 1 El. & El. 778; 28 L. J., M. C. 179; *R. v. Brickhall*, 33 L. J., M. C. 156.



forms the ground of forfeiture, in order that the Court may see that the penalty has been properly imposed, and be quite sure that the convicting justice has not mistaken the law. This is exemplified in the following case:—A conviction on the 45 Geo. 3, c. 121, s. 7 (*l*), for carrying and conveying foreign spirits, stated,—“That on &c., at &c., *J. S.* had been duly convicted before &c. of having, on &c. at &c. (he, the said *J. S.*, then and now being a subject of his present majesty, and being a seaman or seafaring man,) been found carrying and conveying, and assisting in the carrying away and conveying, contrary to the form of the statute in that case made and provided, divers, to wit, seven gallons of foreign brandy, in two casks, called half-ankers, then and there liable to forfeiture, the said offence being by him, the said *J. S.*, committed against the provisions of the acts of parliament made and passed *for the prevention of smuggling*; which offence has been duly proved before the justices, on the oath of one credible witness;” concluding with judgment, that the said *J. S.* had, for such offence, forfeited the sum of 100*l.* pursuant to the 3 Geo. 4, c. 110, &c. It was moved to quash this conviction for insufficiency, in not describing any offence for which the defendant was liable to punishment. *Abbott, C. J.*:—“I am of opinion that this conviction is bad in form, and must be quashed. The general rule as to convictions is, that the specific fact which forms the ground of forfeiture should be stated, in order that the Court may see that the penalty has been properly imposed, and be quite sure that the convicting justice has not mistaken the law. If the conviction had stated the circumstances under which the brandy was imported,—that it was imported in a certain manner, in casks of a certain size, which was contrary to law,—we should then know, that the carriage of it on land in such casks would render it liable to forfeiture; but carrying and conveying

Specific  
ground of for-  
feiture to ap-  
pear.

(*l*) This act is now repealed by 6 Geo. 4, c. 105; but 6 Geo. 4, c. 108, s. 3, makes provision for the

offence mentioned in the cited case; and see 3 & 4 Will. 4, c. 53.

brandy on land may render it liable to forfeiture for various reasons; and, therefore, it was necessary to show, on the face of this conviction, why the brandy in question was forfeitable. It is stated, certainly, as a fact, that the brandy was contained in two casks, called 'half-ankers;' but it is not said how it was imported,—that it was imported in those casks. It might have been imported in casks of an hundred gallons, and having paid the duty, found its way into half-ankers. No fact is given which plainly imports that the brandy was liable to forfeiture. The general rule I have mentioned is a sound one, and ought not to be departed from." *Holroyd, J.*:—"The general rule referred to by my Lord Chief Justice is equally applicable to convictions on the game laws. It is not sufficient, in such cases to state that the party was not qualified by the laws of the realm to do so and so, though the very words of the act of parliament are pursued; but it must appear, whether the convicting justice has drawn the right conclusion from the facts, by negating all the circumstances which are necessary to constitute a qualification (*m*). In convictions on the excise or custom laws, if the particular facts and grounds of forfeiture are stated, it is not necessary to name the statute by which the penalty is given, but merely to state, that the offence is contrary to the statute in that case made and provided; and the Court will then see whether the justice has drawn the right conclusion. Now, here, no sufficient facts are stated to support the conviction."—Conviction quashed (*n*).

So, a conviction for allowing beer to be consumed in a licensed house, at other hours than those prescribed by order of petty sessions, must state the time fixed by justices at which houses may be kept open and the hour at which beer was consumed; it is not enough to say, "at a time declared to be unlawful by an order of the justices" (*o*).

For the same reason the conviction is bad, if it charges

(*m*) *Post*, pp. 218, 228.

(*o*) *Newman v. Lord Hardwicke*, 8

(*n*) *Ex parte John Smith*, 3 D. & A. & E. 124; *post*, p. 226.  
R. 464; 2 D. & R. Mag. Ca. 126.

the offence in the *alternative*. Thus, on a conviction under the former statute of 5 Geo. 3, c. 14, for killing fish in a private river, where the information set out in the conviction stated that the defendant “did kill, take and destroy, or attempt to kill, take and destroy” the fish,—the Court quashed the conviction for insufficiency (*p*).

The information being the substratum of the magistrate’s jurisdiction, and in the nature of an indictment, must, when it appeared in the conviction, have contained a complete statement of the offence, with all its legal qualities; for the evidence subsequently stated could only support the charge, but *could by no means extend or supply what was wanting in it* (*q*).

The following case relates to another kind of summary proceeding by justices, which, however, is so much in the nature of those convictions we are considering, that the case affords a satisfactory illustration of the principle just mentioned.

By 1 W. & M. sess. 1, c. 21, s. 4, if any clerk of the peace misdemean himself *in his office*, and thereupon a complaint and charge in writing of *such* misdemeanor be exhibited against him to the sessions, the sessions shall discharge him (*r*). An order was removed by *certiorari*, which had been made at the sessions in these terms: “Whereas, by complaint in writing exhibited to this Court against *R. B.*, clerk of the peace, the said *R. B.* was charged with divers misdemeanors in his office, viz. that he exacted of one *A.* the sum of 5*s.* for a *subpæna*, and did compel one *B.* to pay him 9*s.* more than his due fee; and it doth appear upon evidence, that the said *R. B.* misdemeaned himself *in his office by extorting* of the said *A.*, *by colour thereof*, 5*s.* more than was due, and of the

(*p*) *R. v. Sadler*, 2 Chit. 519; and see Cowp. 682, 683; *S. P. R. v. North*, 6 D. & R. 143; *R. v. Morley*, 1 Y. & J. 221; *ante*, p. 173.

(*q*) *R. v. Baines*, 2 Salk. 680; 2 Ld. Raym. 1268, S. C.; *R. v. Wheat-*

*man*, Doug. 345; *R. v. Denman*, 1 Chit. R. 155; *R. v. Innes*, Cald. 458.

(*r*) See *Reg. v. Hayward*, 2 B. & S. 585; 31 L. J., M. C. 177; and 27 & 28 Vict. c. 65.

said *B. 9s.* more than was due: this Court doth discharge and remove him from the said office of clerk of the peace." By the opinion of seven of the judges, including *Holt*, C. J., and *Powell*, J., this order was quashed for the insufficiency of the charge; for they held that, what goes before the *videlicet* being only matter of recital, the charge begins at the *videlicet*; and then it does not appear that these misdemeanors relate to his office. And they held, also, that what followed upon the evidence before the justices did not help, because it is no part of the charge(s).

There is one case, however, in which two of the judges of the Court of Queen's Bench seem to have been inclined to allow the charge and the evidence, which then appeared on the face of the conviction to be taken together,—where the charge was upon oath, and the informer not interested in the penalty,—deeming it sufficient that, upon the whole conviction, a complete offence appeared to be established upon oath (*t*). It is unnecessary to recite at length or to comment upon this case, which, as well from the peculiarity of its circumstance as the want of any decision, can hardly be considered as establishing any point of general importance, or as overturning a principle founded upon more positive authorities.

Allegations  
necessary.

The most essential requisite in the description of the offence is, that it contain, in express terms, every ingredient which is required by the statute. Thus, where a conviction by justices upon their own view for a *forcible detainer*, under 8 Hen. 6, c. 9, omitted to aver an *unlawful entry*, and none was proved, but only an unlawful ejection, the conviction was held bad (*u*).

And if one of the ingredients required by the statute be the *knowledge* of the party, nothing short of a direct

(s) *R. v. Baines*, 2 Salk. 680. A very full report of this case, as argued before the twelve judges, is to be found in 2 Ld. Raym. 1268. The above is taken from Salkeld, and, though much shorter, appears

by a comparison with the report in Ld. Raym. to be a correct summary of the case.

(t) *R. v. Green*, Cald. 391.

(u) *R. v. Wilson*, 3 A. & E. 817; 5 Nev. & M. 164, S. C.

avermment to that effect is sufficient. Thus, in a conviction *Scienter.* on 36 Geo. 3, c. 60, s. 2, which prohibits persons from putting the word *gilt* upon metal buttons, *knowing the same not to be gilt*; the information set out in the conviction charged, that the defendant, on the day and place therein mentioned, did *unlawfully and fraudulently* put and place for sale a certain number of metal buttons having stamped thereon the word *gilt*, the said metal buttons not being *gilt*, &c., contrary to the statute. The conviction was quashed, on the ground that the defendant was not charged with having exposed to sale the buttons marked *gilt*, *knowing that they were not gilt*. The Court considered the fact of knowledge as an essential constituent of the offence, and not supplied by the words *unlawfully, fraudulently and against the form of the statute*, which were not deemed equivalent to "knowingly." It seems, indeed to have been the opinion of Mr. J. *Lawrence*, that if the words used had been so equivalent, the conviction might have been supported (x).

So, a conviction, under the Pilot Act (6 Geo. 4, c. 125)(y), for continuing in charge of a ship after a licensed pilot has offered to take charge, must show on the face of it, that the defendant knew of the offer, for it is not enough to describe the offence in the words of the statute creating it, without adding facts to show that the defendant was a party to it (z). The offer might have been made behind the defendant's back.

So, in a conviction on the Poor Law Act (4 & 5 Will. 4, c. 76), which provides for the punishment of any overseer, who "shall purloin, embezzle or *wilfully* waste or misapply monies, &c. of any parish," it was stated that he had "misapplied monies," omitting the word *wilfully*: it was held that no jurisdiction appeared (a). It was said that "purloin" and "embezzle," of themselves, imported

(x) *R. v. Jukes*, 8 T. R. 536.

(z) *Chaney v. Payne*, 1 Q. B. 712.

(y) Or now under the Merchant Shipping Consolidation Act, 17 & 18 Vict. c. 104, s. 361.

(a) *Carpenter v. Mason*, 12 A. & E. 629.

criminality; but the words "waste" and "misapply" were of doubtful import, and the addition of "wilfully" showed the sense in which they were to be construed. A conviction for assisting in the fraudulent removal of goods under 11 Geo. 2, c. 19, s. 3, was held to be bad for omitting to state that the offence was committed "wilfully and knowingly," in the words of the act (*b*).

In *Re Marsh* (*c*) it was held that in an information against a man under 5 Anne, c. 14, for having game in his possession as carrier, it was not necessary to aver knowledge, that word not being in the statute. It appears, however, that the Court there thought that the *mens rea* was not necessary to constitute the offence, and this view of the decision seems to have been taken by the Court in the later case of *Fletcher v. Calthrop* (*d*). Bearing in mind the strong expressions used in that case as to the necessity of negating circumstances which might make an act lawful, and the general rule that all the circumstances necessary to constitute an offence should appear in the conviction, it is apprehended that, where, from the nature of the offence, a *mens rea* is supplied by law, it should be averred in the conviction, though not expressed in the statute (*e*).

Pursuing statute.

So, a conviction (on the 3 W. & M. c. 10, s. 2, now repealed) for killing deer was quashed for alleging the deer to be killed *in quodam loco* where they had been usually kept, without describing it as *inclosed*, pursuant to the terms of the statute (*f*).

In like manner, where a party was convicted for *having a hand-gun in his house*, contrary to the 33 Hen. 8, c. 6, now repealed,—the words of which statute were, "use to keep in his house,"—the Court quashed the conviction for

(*b*) *R. v. JJ. Radnorsh.*, 9 Dowl. 90; and see *R. v. Dodson*, 9 A. & E. 704; *Charter v. Greame*, 13 Q. B. 226; *ante*, p. 150.

(*c*) 2 B. & C. 720.

(*d*) 6 Q. B. 887.

(*e*) As to the using the terms "wilfully," "maliciously," &c., see p. 176, n. (*s*); and as to averment of knowledge, see *ante*, p. 150.

(*f*) *R. v. Moore*, 2 Ld. Raym. 791; *ante*, p. 169.

not pursuing the words of the statute; as *non constat* but that the gun might have been lent him (*h*).

Thus, also, convictions on the former game laws for keeping and using a *dog* to destroy game (*i*), or for using a *hound* (*k*), have been set aside; for neither of these denominations was contained in those statutes. But a *dog* called a *greyhound* was sufficient (*l*).

No intendment is admitted to help out a description defective in the want of an essential component (*m*). No intendment admitted.

In a conviction on the Lottery Act (22 Geo. 3, c. 47, now repealed) the information on the face of the conviction stated, that the defendant received of one *S. T.* the sum of 5*s.*, on promise to pay 1*l.* 6*s.* 3*d.* on the event that *the ticket* No. 37,107 should be drawn fortunate on the 37th day of the drawing of the lottery authorized and established by an act of parliament made in the twenty-fifth year, &c. entitled, &c., contrary to the form of the statute. The general act, 22 Geo. 3, c. 47, (under which the penalty was given by section 13, referring to section 2,) prohibits all adventuring with *lottery-tickets in any lottery*, which may at any time be authorized by act of parliament; and inasmuch as it was not expressly averred that the ticket, upon which the insurance was made, was a *ticket in any lottery authorized by act of parliament* (the only mention of such lottery being with reference to the time of drawing), the offence was held to be incompletely described and the conviction quashed (*n*).

For the same reason a conviction under the former acts relating to the customs has been held defective. The con-

(*h*) *R. v. Llewellyn*, 1 Show. 48.

(*i*) *Reason v. Lisle*, Com. 567; Burn's J., tit. Game.

(*k*) *Hooker v. Wilks*, 2 Stra. 1126.

(*l*) *R. v. Hartley*, Cald. 175.

(*m*) *Ante*, p. 174; and see *R. v. Daman*, 1 Chit. 155, where *Holroyd, J.*, said, "It is a rule with respect to summary proceedings before justices on penal statutes, that after conviction, nothing can

be intended, so as to get rid of any defect in point of form. Every thing necessary to support the conviction must appear on the face of the proceedings, and must be established by regular proof, or by the admission of the party of that which is not proved." See *R. v. Hawkins*, 2 D. & R. 209; 2 D. & R. Mag. Ca. 1; 2 B. & C. 31.

(*n*) *R. v. Trelawney*, 1 T. R. 222.

viction stated, that "*C. H.* was convicted of having been found on board a vessel subject to forfeiture, for hovering within the limits of a port of this kingdom, having certain contraband goods on board." By the 24 Geo. 3, c. 47, s. 1, it was enacted, "that if any ship or vessel should be found at anchor, or *hovering*, within the limits of any of the ports of this kingdom, &c. (and not proceeding on her voyage, wind and weather permitting, *unless in case of unavoidable necessity and distress of weather*,) having on board any brandy &c., or any goods liable to forfeiture, &c." then not only the goods but the ship should be forfeited. The 45 Geo. 3, c. 121, s. 7, made liable to arrest all British subjects found or discovered to have been on board any ship or vessel liable to forfeiture, under the provisions of that or any other act for hovering within certain distances of the British dominions, unless they proved that they were passengers. And the 3 Geo. 4, c. 110, gave a general form of conviction, which was followed in this case, and which did not require that the offender should be described as a *British subject*. The Court held the conviction bad, for not stating that the vessel was hovering, without the lawful excuse specified in the act; and also for not alleging *C. H.* to have been a *British subject (o)*.

Offender  
brought within  
the description  
of the statute.

Upon the like principle it has been held, that to justify a conviction for offering goods to sale without a licence, under the former act relating to hawkers and pedlars, the charge must bring the defendant within the description of persons requiring a licence, and that it is not enough to allege that he sold *as a hawker and pedlar (p)*.

A conviction for this offence set forth, "that one *T. P.* came before the justice and gave him information, that *T. Little*, the defendant, (at a place and time specified,) was found offering for sale silk handkerchiefs, and trading as

(o) *Ex parte Hawkins*, 2 B. & C. 31.

(p) See *R. v. Websdell*, 3 D. & R. 360; 2 D. & R. Mag. Ca. 44; 2 B. & C. 136; and *R. v. M'Gill*, 3 D. &

R. 377; 2 B. & C. 142; 2 D. & R. Mag. Ca. 82; *R. v. Turner*, 4 B. & A. 510; 3 Burn's J., pp. 478, 480, tit. "Hawkers and Pedlars;" and stat. 50 Geo. 3, c. 41.



a hawker, pedlar or petty chapman; and that the said *T. Little* did then and there offer to sell a parcel of silk handkerchiefs; and that the said *T. Little* did not, although required so to do, produce any licence, as the law in that case made and provided directs, to qualify him for his said trading." It afterwards stated, that the defendant, upon his appearance, was asked if he had anything to say why he should not be convicted of the *said* offence so charged upon him in form aforesaid. Whereupon he *confessed*, that he did offer for sale silk handkerchiefs to the said *T. P.* in such manner as is mentioned in the aforesaid information, and that he hath no licence for selling thereof. It then proceeded, "and the said *T. Little* is now here required to produce a licence granted to him to empower or qualify him to travel or trade, pursuant to the statute; and he doth not produce any such licence, or any licence in that behalf, and doth not allege any matter in his defence." Whereupon it was stated, "that it manifestly appears to the justice, that the defendant is guilty of the offence in the information above laid to his charge, in manner and form as by the same is above alleged." He was accordingly "convicted of the said *premises* in the said information specified, according to the form of the statute in such case made and provided." The act 9 & 10 Will. 3, c. 27, "required a duty to be paid, and a licence taken out by every hawker, pedlar, petty chapman, or any other trading person *going from town to town, or to other men's houses, and travelling either on foot or with horse, carrying to sell, or exposing to sale any goods,*" &c. The objection on behalf of the defendant was, that the charge did not bring him within the description of the act, as going from town to town, &c. and travelling, &c., but only described him generally to be a person that traded as a hawker and pedlar, and offered to sell a parcel of silk handkerchiefs to the informer. The conviction was quashed, and Lord *Mansfield* said, "A single act of selling a parcel of silk handkerchiefs to a particular person is not a proof that he was *such* a hawker,

pedlar or petty chapman as ought to take out a licence by the act. Now it is certainly of the essence of the crime of not producing a licence, that he be such a person as ought to take out a licence. It may not be necessary to define exactly what a hawker, pedlar or petty chapman is; but it is necessary to allege and show that he sold the goods, and traded as one" (q). *Denison and Wilmot*, JJ. concurred for the same reasons; the former also saying, that

(q) *R. v. Little*, 1 Burr. 609. I have been favoured with an exact copy of the conviction in this case from the MSS. of a gentleman at the bar, which, as it is not set out at length in the report, and serves to illustrate more fully the effect of the decision, it may be useful to subjoin:—

*City and County of the City of Lichfield.* } Be it remembered, that on, &c. at, &c. one *T. Preston*, gentleman, cometh in his proper person before me, *W. B.* &c., and giveth me, the said justice, to understand, &c. that one *Thomas Little*, on &c. in the parish, &c. was found offering to sale silk handkerchiefs, and trading as a hawker, pedlar or petty chapman; and that the said *T. L.* did then and there offer to sell to him, the said *T. P.*, a parcel of silk handkerchiefs, and that the said *T. L.* did not, although required so to do, produce any licence, as the law, in that case made and provided, directs, to qualify him for the said trading; and the said *T. P.* thereupon then and there prayed that the said *T. L.* might be convicted, &c. Whereupon the said *T. L.*, being brought before me, and being then and there present, and having heard the said information read, and being charged therewith, he, the said *T. L.*, is then and there asked by me, the said *W. B.*, if he hath anything to say why he, the said *T. L.*, should not be convicted of the said offence so charged upon him in form aforesaid, according to the form of the statute, &c. Where-

upon he, the said *T. L.*, doth now here freely and voluntarily confess before me, the said *W. B.*, that he did offer to sell silk handkerchiefs to the said *T. P.*, in such manner as is mentioned in the said information, and that he hath no licence for selling thereof; and the said *T. L.* is now here required by me, the said *W. B.*, the justice aforesaid, to produce a licence granted to him to empower or qualify him to travel or trade, pursuant to the statute in that behalf made and provided; and he, the said *T. L.*, doth not produce before me any such licence, or any licence granted to him in that behalf; and the said *T. L.* doth not pretend or allege that he is a real worker or maker of the said goods, or the child, apprentice, agent or servant, of or to any such worker or maker, nor doth he allege any other matter in his defence: Whereupon, &c. I do adjudge, that the said *T. L.* is an hawker, within the true intent and meaning of the statute in such case made and provided, &c.

From a note of the judgment annexed to the above, it appears, that the Court declared the going about from place to place to be of the essence of the offence, in order to make the defendant a person who ought to take out a licence; and the being described as a hawker and pedlar, without any allegation of the fact of his going from town to town, was a conclusion unsupported by the premises (note to the 1st edition).

"he thought the material averment to be here wanting, it not being averred that he was such a hawker, pedlar or petty chapman as ought to take out a licence;" and the latter, that "certainly a man may sell goods as a hawker, &c. without being such a person as is obliged to take out a licence" (r).

On a conviction for selling by auction without a licence, it was held sufficient to allege in the information, "that the defendant did, in the capacity of an auctioneer, put up to public sale, *by way of auction*, and did vend by public sale by way of auction, divers goods, &c., without first taking out a licence" (s). The words of the act 17 Geo. 3, c. 50, upon which the conviction was founded, require a licence to be taken out by every person "who shall exercise the calling or occupation of an auctioneer, *at any sale*, by outcry, &c. or any other *mode of sale by auction*, or who shall act in such capacity." It was objected, that though the information charged the defendant with having sold goods in the capacity of an auctioneer, yet neither that, nor the evidence, alleged him to be one; and the case of *R. v. Little* was cited, in which, it was argued, the Court held that a single act of trading did not prove a man to be such a hawker and pedlar as ought to take out a licence. But Lord *Mansfield* said, "this case is very different from that of a hawker and pedlar; going about and selling is necessary to make a man a hawker and pedlar; but here a single act was enough to bring a man within the statute:" and Mr. J. *Buller* said, "a sale by auction is a known and certain term; but the witness goes further, and states it in such a manner as clearly shows it to be within the act."

(r) The conviction was defective both in allegation and proof; the being found in a particular town and making one sale not being an equivalent in either particular to "going from town to town, &c." In the late case of *Manson v. Hope*, 2 B. & S. 498; 31 L. J., M. C. 191, it was decided that a person going from the town of his residence to sell goods in

a room at another was within this description, the Court, however, saying they should have been inclined to decide the other way, but for the previous cases of *Attorney-General v. Tongue* and *Attorney-General v. Woolhouse*, 12 Price, 51, 65.

(s) See the conviction, Appendix of Precedents, tit. Auctioneer.

The conviction was therefore confirmed (*t*). In this case, it will be observed, the information stated not merely an act of selling, as in *R. v. Little*, but of selling in the capacity of an auctioneer, by public sale, by way of auction, which fulfils the description requiring a licence; and therefore one act, *thus described*, was a sufficient overt act of trading as an auctioneer (*u*). But where a conviction against an apprentice for misbehaviour did not show that he was an apprentice within the 4 Geo. 4, c. 29, s. 2,—that is, an apprentice *upon whose binding out no larger a sum than 25l. had been paid*,—the conviction was held insufficient, as it did not appear that the party convicted was such a person whom the justices had any jurisdiction to convict (*v*).

So, where an information, under the 6 Geo. 4, c. 108, s. 34, charged the defendant with soliciting H. to forbear to seize goods liable to be seized and forfeited, alleging that H. was a person employed in the service of the Customs, and that it was his duty to seize such goods; it was held, that the latter allegation being matter of law, and it not being the duty of every person employed in that service,

(*t*) Bosc. 130.

(*u*) See *Allan v. Sparkhall*, 1 B. & A. 100, where it was held, that a licensed hawkker, opening a room in a place, he not being a householder there, and that not being the usual place of his abode, and selling there by retail, does not thereby commit an offence, within the statute 50 Geo. 3, c. 41, s. 7, for preventing hawkers acting as auctioneers, &c. To constitute such an offence, the selling must be by outcry, &c., or some mode of sale at auction. A licensed auctioneer going from town to town in a public stage coach, and sending goods by public waggons, and selling the same on commission by retail, or by auction, at the different towns, is a trading person, within the meaning of 50 Geo. 3, c. 41, s. 6, and must take out a hawkers' and pedlars' licence; *R. v. Turner*, 4 B. & A. 510. So a person trading from town to town, and

having packages of books, &c. sent after him by public conveyance, and taking rooms at each town, and there selling such books, &c. by retail, by auction, is a trading person, within 50 Geo. 3, c. 41, s. 7; *Dean v. King*, 4 B. & A. 517; and see *R. v. Selway*, 2 Chit. Cas. Temp. Hard. 522, which was a conviction on 25 Geo. 3, c. 78, s. 9, since repealed by the above-mentioned statute; see also 1 Dea. C. L. 559; and Hindm. Supp. 1634; and for further information in the law of hawkers' and auctioneers' licences, see *R. v. Websdell*, 3 D. & R. 360; 2 D. & R. Mag. Ca. 44; 2 B. & C. 136; and *R. v. McGill*, 3 D. & R. 377; 2 B. & C. 142; 2 D. & R. Mag. Ca. 82; *R. v. Turner*, 4 B. & A. 510; 3 Burn's J., pp. 478, 480, tit. "Hawkers and Pedlars;" stat. 50 Geo. 3, c. 41; and *Taplin v. Florence*, 20 L. J., C. P. 137.

(*v*) *R. v. Taylor*, 7 D. & R. 623.

the information set out in the conviction was insufficient, for not showing that H. was a person within any of the classes enumerated in the statute, and authorized to seize goods liable to seizure; or that he was employed in such a way as to make him an officer employed within the terms of the 8th section of the statute (*x*).

Although, generally speaking, it is sufficient to follow the words of the statute upon which the conviction is founded (*y*), yet it is otherwise when the statute is so worded as to include acts manifestly not within its intent (*z*). If, indeed, it is expressly declared that it shall be sufficient to follow the words of the statute, it is not necessary to use language more precise (*a*), but otherwise the description must be such that the Court can see that the offence has been committed (*b*); and therefore it is sometimes necessary, in pursuance of the intent of a statute, to adopt a narrower description than what is conveyed in the literal terms of the act. This appears, from the construction which was put upon the former Game Act, 5 Anne, c. 14. It was held, that a conviction on that statute, for *keeping* a gun alleged to be "an engine for destroying game," could not be supported: for, though the words of the act prohibit the keeping or using "*any engine to kill and destroy game*," it was so construed as to confine the offence of *keeping* to those things which could only be used for the purposes prohibited by the act, whereas a gun may be kept without any unlawful design (*c*).

Description more particular than statute.

So, in an action of debt on the game laws, an objection in arrest of judgment was taken to the declaration, because

(*x*) *R. v. Everett*, 8 B. & C. 115.

(*y*) *R. v. Lewis*, 8 A. & E. 888; *Chaney v. Payne*, 1 Q. B. 712, 721; *ante*, pp. 169, 202; and see in the case of an indictment for conspiring to commit an offence, the subject of summary conviction, *R. v. Rowlands and others*, 17 Q. B. 671; 2 Den. C. C. 364; 16 Jur. 268; 21 L. J. Mag. Ca. 81, S. C.; *Nash v. The Queen*, 4 B. & S. 935; 33 L. J., M. C. 94; *R. v. Gray*, 33 L. J., M. C. 78.

(*z*) *Ex parte Perham*, 5 H. & N. 30; 29 L. J., M. C. 31.

(*a*) *Id.*, and *ante*, p. 169.

(*b*) *Ex parte Perham*, 5 H. & N. 30; 29 L. J., M. C. 34.

(*c*) *R. v. Gardner*, Andrews, 55; 2 Str. 1098; see also, for the same point, *Wingfield v. Stafford*, 1 Wils. 315; *Chaney v. Payne*, *supra*; *Fletcher v. Calthrop*, 6 Q. B. 880; *Re Turner*, 9 Q. B. 80; *post*, p. 213. By the Metropolitan Police Act

it stated only that the defendant used a gun, "being an engine to kill and destroy game," without averring, that he used it for the destruction of game. Though the omission in that case was held to be cured by the verdict, it was distinctly admitted that it would have been bad in a conviction; and the authority of the last-mentioned case was not attempted to be questioned (*d*).

But, under the same statute of 5 Ann. c. 14, *keeping a lurcher* was held sufficient in a conviction; and the reason assigned was, that the statute expressly mentioned *lurchers*, and that the prohibition was to keep, *or* use, disjunctively (*e*).

And yet, in an action for *keeping a setting dog*, which was also one of the dogs expressly mentioned in the statute, it was subsequently held, that the mere *keeping* was not enough, and that the dog must have been kept *for the purpose* of killing and destroying game (*f*). And the same point is also stated to have been ruled by Mr. J. *Holroyd* in the case of *Darby v. Goldsmith*, on the Home Circuit (*g*).

Charging what  
is matter of  
law.

Another rule in describing the offence is, that it is not sufficient to state, as the offence, that which is only the legal result of certain facts; but the facts themselves must be specified, so that the Court may judge whether they amount in law to the offence (*h*).

A conviction for profane cursing and swearing set forth the charge, viz. that the defendant did profanely swear fifty-four oaths, and profanely curse one hundred and sixty curses, *contra formam statuti*; and the deposition of the witness was worded in the same manner. Besides a valid

(2 & 3 Vict. c. 71, s. 48), it is enacted that, in any information in writing, and in every conviction for an offence contrary to any statute, it shall be sufficient if the offence is stated in the words of the statute declaring the offence, or attaching any penalty thereunto; see *Ex parte Perham*, 5 H. & N. 30; 29 L. J.

M. C. 33.

(*d*) *Avery v. Hoole*, Cowp. 825.

(*e*) *R. v. Filer*, 1 Str. 496.

(*f*) *Hayward v. Horner*, 5 B. & Ald. 317.

(*g*) *Sussex Summer Assizes*, 1826, from Mr. Dowling's MS., cited in the 2nd edit. of his work, p. 96.

(*h*) *R. v. Nott*, 4 Q. B. 768, 783.

objection in describing the quality of the offender, the Court held the conviction bad, by reason of the oaths and curses not being set forth. They said "what is a profane oath or curse is matter of law, and ought not to be left to the judgment of the witness. The witness here takes upon himself to swear the law, and it is a matter of great dispute among the learned what are oaths and what curses." They referred to the case of *Colborne v. Stockdale*(i), where it was held (on a plea of the statute of gaming), that the particular game ought to be set out; because what is gaming is a matter of law(k).

Many similar convictions have since been quashed for the same reason, viz. that the particular oaths and curses were not set forth(l). But it is sufficient, if it be for swearing one hundred and fifty oaths in these words, viz. (specifying the words once), without repeating each one hundred and fifty times(m).

And it is not now necessary, nor indeed proper, to set out mere matter of evidence, and therefore a conviction under 6 Geo. 4, c. 129, s. 3, which makes it an offence to endeavour by threats to force a workman to leave his hiring, is sufficient, without stating what the threats were or to whom made, the essence of the offence being the endeavour to force a workman to depart from his employ, and the threats being matter of evidence only(n).

Upon this point, also, of the necessity of stating not Pursuing words of statute.

(i) 1 Str. 493.

(k) *R. v. Sparling*, 1 Str. 497; see *R. v. Daman*, 1 Chit. 147; and *R. v. Nott*, 4 Q. B. 768, in which an indictment for administering an extrajudicial oath was held to be bad for not setting out so much of the deposition as might enable the Court to judge whether or not it was of the nature contemplated by the statute.

(l) *R. v. Popplewell*, 2 Str. 686; *R. v. Chaveney*, 2 Ld. Raym. 1368. And a conviction for this offence being pleaded to an action for false

imprisonment, it was said by *Eyre*, C. J., that if the nature of the oaths had not been specified in the conviction, so that they might appear to the Court, it would have been void. *Moult v. Jennings*, cited Cowp. 642.

(m) *R. v. Roberts*, 1 Str. 608; *R. v. Scott*, 33 L. J., M. C. 15.

(n) *Ex parte Perham*, 5 H. & N. 30; 29 L. J., M. C. 33; and *S. C. Id.* 31. See "Combination" in Appendix.

merely the legal effect in the terms of the statute, but the particular acts upon which the Court can judge of the result, may be mentioned the case referred to by Mr. J. *Denison* in the case of *R. v. Jarvis* (o), in these terms: "It was said, that in a conviction it is sufficient to pursue the words of the statute; but I think that it is not so, and there are many cases where it has been ruled otherwise. Among other instances, it was so determined in the case of *R. v. Chapman*, Easter term, 28 Geo. 2, upon a conviction of a person '*for robbing an orchard*;' which the Court held not sufficient, but that it ought to have appeared of what and how the orchard was robbed, that they might judge whether it were a robbery within the meaning of the 43 Eliz. c. 7" (p). In the case of *R. v. Chapman*, to which reference was there made, *Ryder*, C. J., said:—"It is laid down in 3 Inst. 41, that although the words of a statute by which an offence is described are general, the description of an offence in an indictment must be particular, for otherwise the party indicted will not know what charge he is to defend himself against. The description of the offence in a conviction ought to be quite as particular, or

(o) 1 Burr. 154.

(p) And see the report of *S. C.*, Sayer, 203; 1 East, 647, note; see also *R. v. Nott*, 4 Q. B. 768, 783. I have thought it proper to subjoin the material parts of the conviction itself in *R. v. Chapman*, from the record filed in the Crown Office, as necessary to illustrate the objection mentioned by Mr. J. *Denison*. It is as follows. (Filed Hil. 28 Geo. 2, No. 22)—

*Cambridgeshire* to wit.—Be it remembered, that on &c., at &c., T. W., of &c., cometh in his proper person before me, T. S. one of his Majesty's justices &c., and giveth information to me the said justice, that Martha Chapman, of C. in the said county, widow, on the 20th day of July then last past, did rob a certain orchard of the said T. W., at &c. in the county aforesaid (the same

robbery not being felony by the laws of this realm), contrary to the form of the statute in such case made and provided. The evidence is stated as follows, viz. the witness T. S. deposes, "that on the said 20th day of July, in the said year 1754, the said Martha Chapman, in the said information named, did rob a certain orchard of the said T. W., at &c. aforesaid, in the said county (the said robbery so sworn to by the said T. S. not being felony by the laws of this realm), contrary to the form of the statute," &c. The judgment is, that the said Martha Chapman is convicted of the premises in and by the said information charged upon her in manner and form, &c. For the offence of robbing orchards, &c., see now 24 & 25 Vict. c. 96, s. 36.



perhaps more so, as in an indictment (*q*). . . . The manner of the stealing ought to have been stated, that the Court might have judged whether it were felonious, and consequently whether the justice had jurisdiction."

The following is an example of the like rule to that which governs the preceding cases, viz. that where the statute characterizes the class of offences prohibited by a general description, the particular overt acts must appear in the conviction in order to ascertain their legal effect (*r*). This was upon the statute 39 & 40 Geo. 3, c. 106, prohibiting, under a penalty, *all agreements* by any journeyman manufacturers *for controlling* any person carrying on any manufacture, &c. and giving a summary form of conviction in which *the offence* is required to be stated. The defendants were convicted of having been unlawfully concerned in the *making and entering into a certain agreement* for the purpose of controlling W. B., a manufacturer, contrary to the form of the statute. It was urged against the conviction, that the agreement itself ought to have been set forth, in order that the Court might judge whether it were an illegal agreement, for the purpose of controlling the master manufacturers, within the meaning of the act of parliament. The Court of King's Bench concurred in that argument, and quashed the conviction. It is not enough, to use Lord *Ellenborough's* words, that the agreement should be for the purpose of controlling, that is, with the intent to control; but it must be entered into *for controlling*, that is, for effecting that object; and the Court cannot say that this was such an agreement, without seeing what it was (*s*).

General description in words of statute insufficient.

(*q*) An indictment for obtaining money, &c., under false pretences (24 & 25 Vict. c. 96, s. 88) must set out the pretences, although it is not so required in terms by the statute; *R. v. Mason*, 2 T. R. 581; *R. v. Marsh and another*, 1 Den. C. C. 505. Similar words are used in several statutes giving the power of summary conviction, *e. g.*, 5 Geo.

4, c. 83, s. 4, in which are the words "any false or fraudulent pretence."

(*r*) But by 2 & 3 Vict. c. 71, s. 48, convictions by Metropolitan Police Magistrates may state the offence in the words of the statute, *ante*, p. 209, n. (*c*).

(*s*) *R. v. Neild*, 6 East, 417. Two cases were much relied on in support of the conviction. The first was

This opinion, however, of Lord *Ellenborough* has been controverted by Lord C. J. *Abbott* in the subsequent case of *R. v. Ridgway*(*t*), where it was held that a conviction for *attending a meeting* “for the purpose” of carrying on a combination for the purpose of obtaining an advance of wages, correctly described the offence by the words “for the purpose,” although the description of offence referred to in the 4th section, on which the conviction took place, was described in the 3rd section of the statute to be “any combination *to obtain* ;” and that the words “for the purpose of obtaining” and “to obtain” were synonymous. In that case *Abbott*, C. J., said, “there is no man who entertains a greater reverence for every thing that fell from my Lord *Ellenborough*, sitting in this place, than I do ; I cannot, however, help saying, that the observation made by him in *R. v. Neild* (and which certainly was not the foundation of the decision there) is not satisfactory to my mind. My Lord *Ellenborough* appears there to have affirmed, that the words ‘*for the purpose* of controlling,’ following the word ‘*agreement*,’ is not a sufficient allegation to show that the agreement was *for controlling*, that is, for effecting the illegal object ; and therefore, in that view of the case, it occurred to his mind, at that time, that the expression used on that occasion was not equivalent to the language of the act of parliament ; but, on looking to the act of par-

that of *R. v. Fuller*, upon an indictment founded on 37 Geo. 3, c. 70, which makes it an offence to *endeavour* to seduce soldiers from their duty. In that case it was held not to be necessary in an indictment for such offence upon that statute to set out the means by which the endeavour was to be effected ; 1 Bos. & Pull. 180. The other was that of *R. v. Moors and others*, 6 East, 419, note(*b*), where, in an indictment on 37 Geo. 3, c. 123, against administering unlawful oaths, it was holden not to be necessary to set out the oath itself. The latter of these cases at first occasioned some doubt in the minds of the judges, when called

upon to decide in *R. v. Neild* ; but after deliberation they remained satisfied that it turned upon the particular wording of the 37 Geo. 3, c. 123, and did not affect the question then before them. With regard to the former case, *R. v. Fuller*, if it be not allowed to consider it as anomalous, yet after the case of *R. v. Neild*, and as explained by Lord *Ellenborough* on that occasion, it cannot be deemed a safe precedent beyond the particular act to which it applies ; see also *R. v. Nott*, 4 Q. B. 768.

(*t*) 5 B. & A. 527 ; 1 D. & R. 123.

liament, I think the legislature itself has told us, that a combination *to obtain* an advance of wages is an agreement *to do it*. The 3rd section says, 'that every journeyman, &c. who shall enter into any combination *to obtain* an advance of wages, or *for any other purpose* contrary to the provisions of this act, shall,' &c. Now a combination 'to obtain,' is a combination 'for the purpose' of obtaining. They are convertible terms, and it is the same as a combination 'for the purpose.' The words 'for the purpose' show in what sense the legislature has used the word 'purpose.' It is used not in the sense of 'intention,' but 'object and intention.' In the 4th section, the words are, 'all persons who shall attend any meeting had or held *for the purpose* of making any contract, covenant or agreement *by this act declared to be illegal*, or of entering into any combination, *for any purpose declared by this act to be illegal*,' &c. Here again we must intend that the word 'purpose' means the 'object' of the combination, and not the 'intention.' The defendant has been convicted of attending a meeting held '*for the purpose*' of obtaining an advance of wages, and therefore he comes within the terms of the statute." Bayley, J., said, "*R. v. Nield* is not an authority in the present case; the objection to the conviction there was, that the agreement was not set out, and therefore that the alleged offence was not described at all. I agree with the dictum in *Hawkins* (*u*), that any words which do not sufficiently describe the offence will not do; but a variation from the precise words of the statute, in my opinion, is not fatal, if the words used are such as bring the case within the plain meaning of the act of parliament."

It has been observed, that the description of the offence must at least be as particular as that used by the statute.

(*u*) Hawk. P. C. 611, c. 25, s. 110, 8th edition, by Curwood, where it is laid down, that, unless the statute be recited, neither the words *contra formam statuti*, nor any peri-

phrasis, intendment, or conclusion, will make good an indictment which does not bring the offence within all the material words of the statute.

But it has also been seen, from the instances before noticed, that in many cases it must be more so; and several examples have been given, that it is not enough to follow merely the words of the statute. It may indeed be collected as a general rule from the foregoing and following cases, that where an act, in describing the offence, makes use of general terms which embrace a variety of circumstances, it is not enough to follow in a conviction the words of the statute, but it is necessary to state what particular fact prohibited has been committed. This doctrine has been exemplified in the following case:—The conviction was on the general act, 22 Geo. 3, c. 47, s. 13 (x), against the insurance of tickets in the then public lotteries, which made it unlawful “to insure for or against the drawing of any tickets (there referred to), or to receive any money or goods in consideration of any agreement to repay any sum, or to deliver goods, if any such ticket shall prove fortunate or unfortunate, or on any *other chance or event* relative to the drawing of any such ticket, whether as to its being drawn fortunate or unfortunate, or the time of its being drawn or otherwise howsoever, or under any pretence, device, form, denomination or description whatever, to promise or agree to pay any sum, or deliver any goods, or to do or forbear anything for the benefit of any person, with or without consideration, *on any event or contingency* relative or applicable to the drawing of any such ticket,” under a penalty of 50*l*.

The *information* stated, “that J. James, the defendant, did *under a certain pretence or device* promise and agree to pay a sum of money on the event or contingency relative and applicable to the drawing of a certain number or ticket, No. 27, on the fifteenth day of drawing the lottery authorized by an act referred to, contrary to the form of the statute.” The conviction then, after setting out the summons (which was “to appear to answer the matter of the

(x) See 42 Geo. 3, c. 54, s. 27; 4, c. 120, s. 57; 6 & 7 Will. 4, c. 46 Geo. 3, c. 148, s. 4; 1 & 2 Geo. 66; 7 & 8 Vict. c. 109.

complaint aforesaid contained in the said information") and the defendant's non-appearance, stated the evidence of two witnesses, S. C. and W. R., viz. "that the said S. C. on the 2nd of *December* instant, at the place named, insured with the said J. James a certain ticket, No. 27, as to such number not being drawn on the fifteenth day of drawing the said lottery, in consideration of which the said S. C. paid to the said J. James the sum of —, and for which the said J. James promised to pay to the said S. C. the sum of 1*l.* 1*s.*, provided the said number was drawn on the said fifteenth day," &c. The other witness deposed to his having been present at the transaction. The adjudication then followed in the regular form. It was objected, that the *information* was too general, in not properly specifying the fact, or setting out any of its particulars, as the sum received, the pretence, the person with whom the insurance was made, &c. This was allowed to be a valid objection, and the reasons assigned by the Court comprise the principles applicable to this class of cases. *Willes, J.*, "In summary convictions the *charge* must be precisely set out. This charge is general, and does not point out that against which the party is to defend himself. *The evidence cannot go further than the charge.* You should have alleged the fact in the information, in the same manner as you have in the evidence. As to the defendant's not coming in upon the summons, he was not obliged to do it: the charge was too indefinite to call upon him to answer it." "It is not true," *Mr. J. Buller* says, "that in framing a conviction it is sufficient to follow the words of the statute in all cases. In some indeed it may, as where the statute gives a particular description of the offence; but it is otherwise where a particular offence is included under a general description. Where a particular act constitutes the offence, it may be enough to describe it in the words of the legislature: but where the legislature speaks in general terms, the conviction must state what act in particular was done by the party offending to enable him to meet the charge. The

offence here is, promising under certain circumstances to pay so much money. Some circumstances then must be shown: it must be stated for what the money is so promised to be paid”(y).

One objection to the manner of stating the offence in the case of *R. v. Speed*, for killing deer, on the repealed stat. of 3 & 4 Will. & M. c. 10, was, that it was too generally laid in the circumstance of killing; for it was only said, *unam damam, Anglicè*, one *fallow deer*, without saying whether buck, doe or fawn; *quod illicitè occidit*, without showing how, whether by gun, bow, net, &c.(z). The objection, however, was overruled. The manner of killing, it was held, need not be shown specially; because, according to *Holt*, C. J., the killing, or not, is the material part(a).

Circumstances impliedly contained or excluded, where necessary to be stated or negatived.

But in all cases, where an act, made punishable by summary conviction, may be lawful, if performed under certain circumstances, these circumstances ought to be negatived in the conviction(b), as they are plainly implied and form necessary ingredients in the offence.

Thus the stat. 9 Geo. 4, c. 69, s. 1, renders liable to punishment any person who “shall by night unlawfully enter or be in any land, &c. for the purpose of taking or destroying game;” a conviction under this section setting forth that F. by night did “unlawfully enter certain land, &c. for the purpose of taking game, contrary to the form of the statute,” was held bad for not stating the intent to be to take the game *there*. “The necessity of its alleging an intent to kill game *there*,” said Lord *Denman*, delivering the judgment of the Court, “is deduced from the enormous

(y) *R. v. James*, Cald. 458.

(z) Carth. 502.

(a) 1 Ld. Raym. 584. The rest of the case is taken from the report in Carthew, which is more full as to the point in question.

(b) *Fletcher v. Callthrop*, 6 Q. B. 880, 891, in which the Court disapproved of the rule laid down in the former editions of this work (p. 108), that “where the quality of the

offence is not of a complicated nature, but consists of a simple fact, it is sufficient to use the words of the statute,” as being open to two objections; first, that it did not rest on any authority; and, secondly, that it did not furnish any criterion by which justices of the peace or the Court could discover what cases were thus complicated.

consequences which would otherwise follow. For it cannot be disputed that this omission would leave any man open to a summary conviction as an offender against the stat. 9 Geo. 4, c. 69, s. 1, who should enter the land of another at an early hour during that period, which the statute defines as the night-time, with the intent to pass over such land in order to arrive at preserves of his own and there shoot his own pheasants. The conviction states in the terms of the act, that the plaintiff entered the close *unlawfully*. But we do not know in what sense that word is used. The justices of peace may have thought it unlawful to enter any close with the remotest purpose of killing game, or they may possibly mean that the entry was unlawful as a trespass on the land of another. If such was their meaning, we apprehend that the fact ought to have been averred, and if that ground of illegality was held essential to the offence, the decision in *R. v. Corden* (c), would prove that the absence of the owner's consent ought also to be averred . . . . . Where a certain act is made punishable by summary conviction, which act may be lawful if performed under certain circumstances, these circumstances ought to be negatived in the conviction. None of us doubt that where the proof must negative such circumstances, the allegation in the instrument of conviction ought to do the same (d). This principle is well expressed on a similar, though not exactly the same, occasion in *R. v. Baines* (e), 'and proceedings in cases of this nature, which are to deprive a man of his freehold in a summary way without letting him be tried by his peers, are always construed strictly and never supplied by intendment of matter that does not appear on the face of them' (f).

Within this principle will fall those cases in which it

(c) 4 Burr. 2279; *post*, p. 221.

(d) Although the prosecutor need not prove the negative of the exemption, &c., yet this does not affect the general rule above laid down, because the reason for requiring the exemption to be negatived in the

conviction is, that it is essential to the complete description of the offence.

(e) 2 Ld. Raym. 1265, 1269.

(f) *Fletcher v. Calthrop*, 6 Q. B. 880, 888, 890.

has been held, that as absence by a servant from his master's service may, under certain circumstances, be excusable or justifiable, the unlawful nature of the absence must be shown, by stating it to be wilful or without lawful excuse, although the statute (4 Geo. 4, c. 34, s. 3) simply makes the party's absenting himself from service the ground of complaint (*g*). In *Re Turner* (*h*), the conviction was quashed, because it merely stated that the defendant absented himself from his master's service, and *Williams, J.*, said:—"I always thought that the law was properly laid down by Lord *Mansfield*, in *R. v. Corden* (*i*), that if the fact as charged may be consistent with the innocence of the prisoner, no offence is charged. The question then comes to this, on whom is the onus of negating the excuse? . . . Many cases may be put, in which a party may absent himself from service within the general terms of the statute consistently with perfect innocence, the onus, therefore, is on the complaining party."

So where the warrant of commitment adjudged that the defendant, having contracted to serve as a collier for a certain time, and the term of his contract being unexpired, "did unlawfully misdemean and misconduct himself in his said service, by neglecting and absenting himself from his said service without the leave of his master, without having given to his master any notice thereof, and without *assigning* any sufficient reason for so doing," the defendant was discharged upon the ground that the warrant did not negative the existence of any sufficient reason, but only the assigning of one (*k*).

(*g*) The words of the statute are "If any servant in husbandry, &c. shall contract with any person to serve him, and shall not enter into his service (such contract being in writing and signed), or having entered into it, shall absent himself from his service before the term of his contract, whether in writing or

not, shall be completed, or neglect to fulfil the same, &c."

(*h*) 9 Q. B. 80; 15 L. J., M. C. 140.

(*i*) *Infra*, p. 222, n. (*n*).

(*k*) *Re Geswood*, 2 El. & Bl. 952; 23 L. J., M. C. 35; and see *Ex parte Perham*, 5 H. & N. 30; 29 L. J., M. C. 32.



In the case of *R. v. Corden* (l), so often referred to in the above cases, the former act of 5 Geo. 3, c. 14, for the preservation of fish, which prohibited generally the taking of fish in private fisheries without any express reservation as to the owner's consent, was so construed as to require that the want of such consent should appear in the conviction. The conviction set forth the information of Martha Buxton, viz. that the defendant did fish with a net in a certain specified part of a brook or stream, called the *Schoo Brook*, and did take and kill several fish, against the form of the statute, negating the defendant's having any right, and negating also the provisoes in the act, viz. that the stream was in any park, &c. and alleging that it was in other enclosed ground, being private property (m); and further, the information of J. Chatterton was set forth, stating that Richard Hayne is the true owner of the fishery in question; and thereupon the said Martha Buxton prays, that the defendant may be convicted according to the form of the statute. The conviction then stated the appearance of the defendant, and his confession "of the truth of the *premises in manner and form as charged*;" and then adjudged the said defendant to be *guilty* of the *aforesaid offence*, and to be convicted of the premises, according to the form of the statute; and awarded the forfeiture of 5*l.*, to "be paid as the statute aforesaid doth direct." The conviction was objected to, because it did not appear to be made on the complaint of the owner, or by his authority, or that the fishing was without the consent of the owner. In answer to this objection it was urged, that the statute (s. 3, upon which the conviction proceeded) contained no expressions referring to the consent of the owner, or to a complaint by him. The Court, however, all concurred in holding

(l) 4 Burr. 2279.

Moore; and *R. v. Chaney*, 6 Dowl. 281, 289.

(m) See *Wickes v. Clutterbuck*, 3 D. & R. Mag. Ca. 535; 9 J. B.

the conviction a bad one for want of such an allegation. After adverting to the propriety of keeping a strict hand over summary proceedings in general, they observed, that in the present case the justice did not appear to have jurisdiction. They said, "here is no complaint from the owner, nor does it even appear to have been without his consent. This is plainly in the act of parliament: the giving the penalty to the owner shows it. All that is here stated might, for aught that appears, have been done with the consent of the owner. The fact ought to appear, so that the Court may be able to judge whether the conviction be agreeable to law. If the owner had been the complainant, that would have shown his dissent. But this is upon the complaint of Martha Buxton; and it does not appear that the defendant has been guilty of fishing in any water, being private property, without the consent of the owner"(n). It should be observed, that another objection, in which the Court concurred, was, that the fact of *ownership* was no where made out; for the witness, who informed that R. Hayne was the owner, was not upon oath.

The question, however, whether the complaint must necessarily be made by the owner, or on his behalf, is not here settled; all that the Court expressed upon that point was, that, if the fact had been so, it would have betokened his dissent, which there was nothing to intimate, as the conviction then stood (n).

A similar principle is recognized in the following case:—

This was a conviction upon the former statute of 22 & 23 Car. 2, c. 25, s. 7, which inflicted a penalty upon any one

(n) We may take occasion here to repeat an observation which has occurred in other cases, viz. that the defendant's confession was not considered as supplying the defect in the description of the offence; for, it was said, if the facts alleged did not constitute a legal charge,

his acknowledgment of those facts could not make him subject to punishment. *R. v. Corden*, 4 Burr. 2279, recognized in *Fletcher v. Calthrop*, 6 Q. B. 889; *Re Turner*, 9 Id. 80; and *Tarry v. Newman*, 15 M. & W. 645.

who "should take any fish in any river, stew, pond, moat or other water, without the licence or consent of the lord or owner of the said water." This conviction stated in the *information*, that T. Mallison, the defendant, not having any lands, &c. (negating *unnecessarily* the qualifications in sect. 3, which apply only to game), *nor being in anywise whatsoever empowered, authorized or qualified*, by the laws of this realm, to take, kill, or destroy any sort of fish, fowl or other game whatsoever, either for himself or for any other person, did, with a certain net, unlawfully take and kill ten fish, contrary to the form of the statute. The evidence was precisely to the same effect. Several objections were made to the conviction; but that upon which the judgment proceeded was, the omission to allege that the defendant "had not the licence or consent of the owner," and that it might, for anything that appeared, be the defendant's own fish in his own pond that he killed. Lord *Mansfield* said, "This conviction is clearly bad. The offence provided for by the act of 22 & 23 Car. 2, c. 25, is stealing fish; taking it without the licence or consent of the owner. *Taking* and killing, in the intention of this statute, mean stealing. But this man is not convicted of any offence; for he is not charged with stealing, nor even with taking and killing, the fish of another person, or in another person's pond." And the conviction was quashed upon that ground (*p*).

However, it would perhaps be going too far to lay it down that the act must be stated to be done *feloniously*, or with *intent to steal*, if the statute makes no express mention of it. For an exception to a conviction for killing deer, that it was not laid *furtivè*, or *cum animo furandi*, but only, *illicite occidit*, was overruled; though it was admitted that the intent of the act was, to prevent killing in a clandestine manner by stealth; but it was said to be enough in that case, to lay the words in the act of parlia-

ment(*q*). In that case, the fact was alleged to be, without the consent of the owner(*r*); so that the objection was only to the want of a positive averment of the intent to steal, and not, as in the preceding case, that nothing appeared to indicate an invasion of another's property.

As to necessity of complaint being made by owner of property.

With respect to the point, whether it was requisite that the complaint should have been made by the owner of the fishery, or on his behalf, to warrant a conviction under the 5 Geo. 3, c. 14, s. 3,—it had been decided in the case of *Rex v. Daman* (*s*), that it must be distinctly stated in the information, and in the evidence, that the proceeding was at the instance of the owner of the fishery. The defendant had been convicted of destroying with a net fish in enclosed grounds, being private property. The conviction stated as follows:—"Be it remembered, that on &c. at &c., Sir Henry Fane, of &c., *at the instance and on the behalf of the Honourable Ann Fane, widow, lady of the manor of Avon Tyrrell*, in the said county, came in his proper person before us, and gave us to be informed," &c. It then proceeded to set out a regular information by Sir H. Fane against the defendant for the offence, concluding thus: "whereupon the said Sir H. Fane, on behalf of the said A. Fane, lady of the manor, and owner of the fishery aforesaid, prayed judgment, and that the defendant might be brought before us," &c. The conviction then set out the defendant's appearance and plea, and the evidence; but it was not expressly stated, either upon the face of the information or in the evidence, that the proceedings originated with the Honourable Ann Fane, the owner of the fishery. It was moved to quash it on this ground: for, as by the act the penalty is payable to the owner of

(*q*) *R. v. Speed*, 1 Ld. Raym. 583.

(*r*) This appears by the report of the same case, Carth. 502.

(*s*) 2 B. & Ald. 378. In a recent case, *Tarry v. Newman*, 15 M. & W. 645, a conviction under 7 & 8 Geo. 4, c. 29, s. 39, for stealing a growing

ash tree, was held to be good on the construction of that statute, notwithstanding it had not proceeded on the information of the party aggrieved. See now 24 & 25 Vict. c. 96, s. 33; see *ante*, p. 69.

the fishery, it ought clearly to appear, both upon the information and upon the evidence, that the proceeding originated with Mrs. Fane. The statement, as matter of memorandum, that it was at the instance and on behalf of the owner of the fishery, was only the language of the magistrate; and there was nothing stated in the information, or in the proof, to show that it originated at her instance. The case of *R. v. Corden, supra*, was cited. *Bayley, Holroyd, and Best, Js.*, were clearly of opinion, that the objection was well founded: *Best, J.*, said, "It is not clear, that the lady of the manor has ever adopted this proceeding; and she may, for anything that appears here, still bring an action for the penalty. Now, the party ought not to be oppressed with two prosecutions for one offence. The conviction is therefore bad, and ought to be quashed" (t).

Another consideration to be attended to in describing the offence is, that particular sums or quantities must be specified, for an obvious reason, which is explained by the following case (u):—

Specifying particular sums, quantities, &c.

The defendant was convicted on the *Kensington Turnpike Act*, for refusing to account and pay over the money received by him as collector. The conviction was quashed because no particular sum was specified, nor the times when the money was charged to be received, so as to enable him to defend himself upon a second charge. And, though the counsel for the trustees pressed to have the commitment stand good as to the not accounting, yet the Court

(t) See a more elaborate report of this case, and the notes thereon, in the first volume of Mr. Chitty's Reports, p. 147; vide Appendix. It has been also held, that a conviction on the same statute must show the offence to have been committed in *inclosed ground*; *R. v. Sadler*, 2 Chit. 519. A stream of water, running on one side of a piece of ground, inclosed on every other side, was held not to be a *stream* in an in-

*closed ground*, within the meaning of 5 Geo. 3, c. 14, s. 3, so as to subject a person fishing therein to the penalty inflicted by that act. *Lisle v. Brown*, 1 Marsh. 642; 5 Taunt. 440; and see 1 Deac. Crim. Law, 488.

(u) The same rule, founded on the same reason, prevails with regard to indictments, Arch. Crim. Pl. & Ev., p. 43, 11th edition: see *Nash v. The Queen*, 33 L. J., M. C. 94.

said it was one entire non-feasance charged both in the conviction and the commitment, and they would not sever them (*x*).

In like manner, on a conviction for taking and destroying fish, the number or quantity of fish taken, killed or destroyed by the defendant should be stated (*y*).

In a conviction for keeping a beer-house open at times prohibited by the order of justices it is not sufficient to allege that it was open "at a time declared to be unlawful by an order of the justices," but it should aver that the justices made such an order, and state the particular time at which the house was so kept open (*z*). A conviction of a publican, however, for allowing disorderly conduct in his house against the tenor of his licence, not naming the parties who were permitted to misbehave nor stating the terms of the licence, is not too vague (*a*).

So a conviction under the Railway Clauses Consolidation Act (8 Vict. c. 20, s. 58), for not repairing damage done to a road by a railway company, need not specify the particulars of the damage or of the repairs ordered to be done; it may also include several roads in the same parish, and purport to be made "by virtue of the Railway Clauses Consolidation Act" (*b*).

An additional reason for enumerating particular quantities, &c. exists in those cases where the magistrate is directed to award compensation according to the injury, or to assess a penalty by way of damages. Thus, where a conviction upon the former stat. 43 Eliz. c. 7, s. 1 (*c*), against robbing of orchards, cutting of trees, &c., set forth the complaint by R. B., that the defendant cut down *divers* lime-trees of the said R. B., upon which, after being duly convicted, he

(*x*) *R. v. Catherall*, Str. 900; and see Cro. Car. 380.

(*y*) *R. v. Marshall*, 2 Keb. 594.

(*z*) *Newman v. Lord Hardwicke*, 8 A. & E. 124; 3 N. & P. 368, S. C.; and see *Newman v. Bendyshe and another*, 2 P. & D. 340.

(*a*) *Wray v. Toke*, 12 Q. B. 492;

under 11 Geo. 4 & 1 W. 4, c. 64, s. 13.

(*b*) *London and North Western Railway Company v. Wetherall and another*, 20 L. J., Q. B. 337.

(*c*) See now 24 & 25 Vict. c. 96, s. 36.

was awarded to pay so much as damages to the complainant. Upon an exception taken to the uncertainty of the conviction, in not mentioning the number of the trees, which it was insisted should have been done, as a measure for the justice to give damages by, *Holt, C. J.*, said, "in trespass, the nature and number of things ought to be mentioned; and much more in a conviction, where all imaginable certainty is requisite; the subject, by this private jurisdiction, exercised by the justice in a summary way, being deprived of the privilege and benefit of the common law, and of being tried in the face of the country by the judgment of his peers. Besides, the same reason that holds in trespasses holds here, viz. the ascertaining the damage which by the statute the justice is to assess, and this conviction may be pleaded in bar of an action of trespass for the same trespass." And therefore, for this reason, *per totam Curiam*, the conviction was quashed (*d*). So where the consequences of a conviction under the several sections of a statute are different and dependent upon the amount of damage done (as under 24 & 25 Vict. c. 97, relating to malicious injuries to property), a conviction will be quashed for not finding the amount of damage (*e*). It has been held, however, that an order and adjudication, founded on 11 Geo. 2, c. 19, s. 4, for fraudulently and clandestinely removing goods and chattels, not exceeding the value of 50*l.*, to avoid a distress for rent, need not enumerate or specify the particular goods and chattels, alleged to have been removed (*f*).

As to the *manner* of alleging the *quantity* of the article in question, a conviction for buying a certain quantity of

(*d*) *R. v. Burnaby*, 2 Ld. Raym. 900; 1 Salk. 181. In *R. v. Gibbs*, 1 Str. 497, an indictment for selling in unlawful measures *divers quantities* of ale, was held to be too general, and bad on demurrer.

(*e*) *Charter v. Greame*, 13 Q. B. 216.

(*f*) *R. v. Rabbits*, 6 D. & R. 341; 3 D. & R. Mag. Ca. 269; see as to allegation of value, *R. v. Gamble*, 16 M. & W. 384.

wheat, to wit, fifteen bushels of wheat (contrary to 22 & 23 Car. 2, c. 12), has been held sufficiently certain (*g*).

By the stat. 1 Jac. 1, c. 9, any innkeeper, permitting an *inhabitant* to tipple in his house, was liable to be convicted on the oath of *two* witnesses. That act having expired, it was by the 21 Jac. 1 re-enacted and made perpetual; but it was altered in this respect, that the conviction might be made upon the oath of *one* witness only. By the 1 Car. 1, c. 4, it is provided, that an alehouse-keeper, permitting a *stranger* to tipple, should "incur the same penalty, and in such manner to be proved, levied and disposed, as in the former statute, 1 Jac. 1, c. 9." Where an alehouse-keeper was convicted of permitting and suffering several persons (named in the conviction) to remain and continue drinking and tipping in his alehouse, "against the form of the statute," and the conviction was stated to be made upon the oath of *one credible witness*, it was objected that it did not also state whether the persons who were suffered by the defendant to tipple in his alehouse were *inhabitants* of the place, or *strangers*; for, in the latter case, the conviction must be on the 1 Car. 1, c. 4, and that act requires the conviction to be on the oath of two credible witnesses. It was therefore necessary for the conviction to show, whether the persons tipping were *inhabitants*, or strangers. The Court were clearly of opinion that this was a fatal objection, and ordered the conviction to be quashed (*h*).

One of the most essential points to be carefully attended to in describing the offence charged is, that every exemption, excuse or qualification, which accompanies the description of the offence in the enacting clause, be distinctly and positively negatived; and the 11 & 12 Vict. c. 43, which gives a general form of conviction, does not seem to render this the less necessary; for, as it directs *the facts*

(*g*) *R. v. Arnold*, 5 T. R. 353.

(*h*) *R. v. Dove*, 3 B. & A. 596; and as to conviction being for the

same offence as that contained in the information, see *ante*, pp. 125, 196.



and circumstances of the offence to be stated as defined by the statute creating it, the want of qualification to do the thing prohibited must be stated as a part of the offence (*i*). Mr. Serjeant *Hawkins*, without vouching any decided authority, delivers it as his opinion, after remarking the contrary determination in regard to indictments, that a conviction on a penal statute ought expressly to show that the defendant is not within *any* of its provisoes; for, he says, since no plea can be admitted to such a conviction, and the defendant can have no remedy against it but from an exception to some defect appearing upon the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty, and satisfy the Court that the defendant had no such matter in his favour, as the statute itself allows him to plead (*k*).

This consideration would lead to a conclusion, that it is necessary to negative all the provisoes annexed to the offence, whether by the same or any other clause or statute, as well as those in the enacting clause (*l*). The rule, however, seems, as established in practice, to be restricted to those of the latter description only (*m*). To this extent the opinion of Mr. Serjeant *Hawkins* is adopted by Lord *Kenyon* in the following case:—

What exemptions necessary to be negatived.

Conviction on the stat. 36 Geo. 3, c. 60, ss. 3 and 4 (*n*),

(*i*) In an action of debt for a penalty under the former Game Laws, it was held to be unnecessary to negative *particularly* in the declaration the qualifications mentioned in 22 & 23 Car. 2, c. 25; 2 Com. Rep. 524, 576; 1 East, 649; and see *Steel v. Smith*, 1 B. & Ald. 94, and *post*, p. 240.

(*k*) 2 Hawk. P. C. c. 25, s. 113.

(*l*) 8 T. R. 512. *Vide infra*.

(*m*) For a full discussion and explanation of the general doctrine here alluded to, *vide R. v. Bell*, Fost. Cr. L. 430; *Spieres v. Parker*, 1 T. R. 141; *Gill v. Scrivens*, 7 T. R. 27; and see 1 Wms. Saund. 262 a, (6th

edition; ) *Id.* 233 b, n. (*d*); 2 Wms. Saund. 72 h, n. (*d*); Plow. 376; 2 Hale's P. C. 170; 1 Stark. Crim. Pleading, 159—164.

(*n*) By sect. 3, no person shall place or pack, or cause, &c. for sale in or upon any card (*except the pattern card or pattern cards*), or paper, &c. or expose to sale, any metal buttons indicating the quality thereof, other than and except the word "gilt," or "plated," respectively, under a penalty of 5*l.* a dozen. Sect. 4 provides that the act shall not extend to inflict any penalty upon a person who shall pack or place for sale upon any card (*except*

stating the information, "that J. Jukes, on, &c. did unlawfully and fraudulently put and place for sale, in and upon certain cards and paper, divers metal buttons, to wit, &c. having marked or stamped on the under side thereof certain words indicating the quality thereof, to wit, the words 'double gilt,' the said buttons so marked 'double gilt,' or any of them, not being double gilt within the true intent and meaning of the statute in such case made and provided, contrary to the form of the statute," &c. When the case was called on, Lord *Kenyon*, C. J., observed, "that the conviction could not be supported, because the information did not negative the exception in the clause enacting the offence, viz. that the buttons were exposed upon *the pattern cards*; that the only cases where it was not necessary to negative the qualifications were, where the exception was introduced in a subsequent clause; and there it must come by way of defence on the part of the defendant." And again, "This is not an objection of *form*, but of *substance*: the reason is well given by *Hawkins* why a conviction should negative all the exceptions in the enacting clause, because the party cannot plead to such convictions, and can have no remedy against it but from an exception to some defect appearing upon the face of it, and all the proceedings are in a summary manner. Therefore the conviction itself should show, that the party accused had not the defence which the act gives him, if true. The good sense of the thing is in support of what is said by *Hawkins*; for, being a summary proceeding, and conclusive on the defendant, it ought to have the greatest certainty on the face of it"(o).

In all these cases the question is, to which of the prohibited acts the exception applies. As in the following case:—

The defendant was convicted before two justices on the

the pattern card,) any buttons having the words "double gilt," provided such buttons were covered

with gold in the proportion there specified.

(o) *R. v. Jukes*, 8 T. R. 542.

statute 12 Geo. 3, c. 61, s. 11, for having in his possession more gunpowder than was allowed to be kept by law. The section, on which the conviction was founded, makes it an offence "for any person, not being a dealer in gunpowder, to keep more than fifty pounds in any house, &c. or on any river or water within a mile of a market town, or two miles of any magazine belonging to his majesty, or half a mile of any parish church, or in any other part of *Great Britain* (except in mills, or other places, which, at the commencement of this act, were used for the making of gunpowder, &c.) on pain," &c. The information did not negative the latter exception; and it being moved to quash the conviction on this ground, the Court held, that to negative that exception in the information would have been repugnant and contradictory; inasmuch as the exception related to a new subject, and the gunpowder in question was already comprehended within a particular part of *Great Britain*, to which a provision was specifically annexed (*p*).

It may be here added, that where anything is declared to be an offence *sub modo* only, the fact must be averred with the necessary modification; thus:—

Offence *sub modo*.

The defendant was convicted as a rogue and vagabond under the former act of 17 Geo. 2, c. 5, s. 2 (*q*), for playing at a certain *unlawful game with bowls*. The act of 33 Hen. 8, c. 9, s. 16, makes the playing at bowls *out of the person's own orchard or garden* unlawful; and the conviction, not alleging that to be the fact, could not be supported; for the 17 Geo. 2 did not specify *bowls*, but mentioned only playing at any *unlawful game*, as constituting a rogue and vagabond (*r*).

The rule, therefore, and distinction resulting from these, and confirmed by the cases mentioned in the sequel, seem to be clear, viz. that all circumstances of exemption and

General rule.

(*p*) *R. v. Manners*, 1 B. & Ald. 362.

(*q*) See now 5 Geo. 4, c. 83.

(*r*) *R. v. Clarke*, Cowp. 35.

modification, whether applying to the *offence* or to the *person*, that are either originally introduced into or incorporated by reference with the enacting clause, must be distinctly enumerated and negatived; *but* that such matters of excuse, as are given by other distinct clauses or provisoes, need not be specifically set out or negatived.

The rule has also been stated in these terms:—Where the enacting clause of a statute constitutes an act to be an offence under certain circumstances and not under others, then as the act is an offence only *sub modo*, the particular exceptions must be expressly specified and negatived; but where a statute constitutes an act to be an offence generally, and in a subsequent clause makes a proviso or exception in favour of particular cases or in the same clause, but not in the enacting part of it, by words of reference or otherwise, there the proviso is matter of defence or excuse, which need not be noticed in the information or conviction (*s*).

It is not necessary to notice the proviso merely because it is placed in the same section of the printed act, unless it is also a part of the enacting sentence, for statutes are not divided into sections upon the rolls of parliament (*t*).

It must be here particularly noticed, that it is immaterial whether the exception be in another section, or in another act of parliament, if distinctly referred to and engrafted into the enacting clause. This is apparent from the following cases, the first of which is an example of exemptions introduced by a preceding clause, and the others by a preceding act of parliament:—

Exemptions in  
preceding  
clause.

By the *fifth* section of Jac. 1, c. 22, it is enacted, that no person shall carry on the trade of a tanner, except under certain qualifications therein mentioned; the *seventh*

(*s*) 1 Burn's Just. tit. "Conviction," p. 972 (29th edition); see *Knowlden v. The Queen*, 33 L. J., M. C. 219, 223. See also *ante*, pp. 121—124.

(*t*) *Wells v. Iggulden*, 3 B. & C. 186; *Steel v. Smith*, 1 B. & Ald. 94;

*Looker v. Halcomb*, 4 Bing. 183; *Jones v. Aeron*, 1 Ld. Raym. 120; *Thibault v. Gibson*, 12 M. & W. 96; *Charter v. Greame*, 13 Q. B. 227; and see 1 Chitty Pleading, 246 (7th edition.)

section enacts, that no person shall buy or contract for any rough hides, &c. but such persons *as by virtue of that act* might lawfully use the trade of a tanner. In a conviction upon this section, it was held not to be sufficient to set forth, in the words of it, that the defendant was not such a person as *by virtue of that act* might lawfully use the trade of a tanner, but the conviction must particularly negative his being within any of the enumerated exceptions mentioned in the fifth section (*u*).

The rule, as applied to exemptions adopted from a preceding act of parliament, is abundantly exemplified by the instances of cases on the former game laws. — By the statute 22 & 23 Car. 2, c. 25, s. 3, all persons not having lands, &c. were thereby declared to be persons by the law of this realm not allowed to have or keep dogs, nets, &c.; and a subsequent statute, 5 Anne, c. 14, s. 4, inflicted a penalty upon any person *not qualified by the laws of this realm so to do*, who should do certain acts there mentioned. In convictions on the latter statute, it was held to be not sufficient to describe the defendant generally as a person not qualified by the laws of this realm, but that all the qualifications enumerated in 22 & 23 Car. 2, c. 25, must be distinctly and specifically negated (*x*).

In preceding statute.

In one of the older cases, indeed, upon the act 5 Anne, c. 14(*y*), in which a conviction was quashed for omitting one qualification, the others being enumerated, it is alleged to have been thrown out by the Court, that if it had been laid generally that the defendant, “not being a person qualified according to law,” &c. it had been enough; but that, the qualifications being distinctly set forth, the omission of one was fatal. That opinion, however, was overruled by the series of later and uniform authorities which are here shortly enumerated (*z*):—

(*u*) *R. v. Pratten*, 6 T. R. 559; 1 Wms. Saund. 262 (*a*).

(*x*) *Vide infra*.

(*y*) *The Queen v. Matthews*, 10 Mod 27.

(*z*) It is, however, suggested that

since the passing of 11 & 12 Vict. c. 43, it may be sufficient to use a general negative, especially if the statute on which the conviction is framed uses general negative terms; see *post*, p. 239.

General negative not sufficient.

Thus, in a conviction on 5 Anne, c. 14, the information charged the defendant with keeping a greyhound, "being a person not qualified to keep a greyhound." It was stated, that the defendant appeared and offered nothing in his defence, wherefore he was adjudged to be guilty, and convicted accordingly. Upon an objection taken to the conviction, for want of enumerating the qualifications, it was defended as strictly conformable to the statute 5 Anne, c. 14. *Parker, C. J.*, at first inclined to support it on that ground; but finally the conviction was quashed, because, in the words of the Court, the witness had taken upon himself to judge of the qualifications (*z*). The same point had been already decided in a case of *R. v. Heywood*, where a conviction, alleging the defendant not to be "qualified, licensed or authorized, to use any engine," &c. was quashed (*a*).

Though the ground of objection stated by the Court in the case just referred to was, that the negative allegation appeared to be the judgment of the witness only, and not of the justices, the ensuing cases demonstrate that the want of a specific enumeration would not have been helped by an adjudication in these general terms.

The very point was again determined, in a case where the defendant was convicted of keeping a lurcher and gun to destroy game, "not being qualified by the laws of the realm to do so, contrary to the form of the statute in such case made." The conviction was quashed, because, as the report states, it was only averred generally that the defendant was not qualified, and it did not aver that he had not the particular qualifications mentioned in the statute (22 & 23 Car. 2, c. 25), as to degree, estate, &c. (*b*).

Lastly, all the former authorities were reviewed, and the point determined, by the following case:—

This was a conviction on 5 Anne, c. 14, setting forth, first, the information of I. W. that one Maurice Jarvis

(*z*) *R. v. Marriott*, 1 Str. 66.

(*a*) Cited 1 Str. 66.

(*b*) *R. v. Hill*, 2 Ld. Raym. 1415.

did unlawfully keep and use a setting dog and net for the destruction of game, and rode with and hunted the said setting dog with intent to destroy game, "he the said M. Jarvis, at the time and place when he so kept and used the said setting dog, &c. not being qualified by any laws or statutes of this realm to kill game, or keep or use any nets, dogs or other engines for the destruction of game, contrary to the form of the statute in such case made." The evidence was afterwards set out, which (after fully proving the fact) went on to negative the defendant's qualification in the same general manner as the information. It was further stated, that the defendant appeared and denied the fact, but showed no sufficient cause why he should not be convicted of the offence charged upon him in the said information. The conviction concluded, "It manifestly appears to us, the said justices, that the said Maurice Jarvis was not then anywise qualified, empowered, licensed or authorized, by or according to the laws of this realm, to kill game; and that the said *M. Jarvis* is guilty of the premises: therefore," &c. The forfeiture was adjudged in the usual form. Several exceptions were taken to this conviction; the first was, that it did not sufficiently show the defendant's want of the qualifications specified in 22 & 23 Car. 2, c. 25, which it was insisted ought to have been particularized, with an allegation that he had not any of them. In answer it was urged, that the conviction followed the very words of the act of 5 Anne, c. 14, upon which it was founded, which does not enumerate the qualifications. Lord *Mansfield*, without hearing the other objections, said, "It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out, otherwise the justices have no jurisdiction. The *obiter* saying (c) in 10 Mod. (if it was a book of better authority than it is) would signify nothing when the determinations are the

other way. There is a great difference between the purview of an act, and a proviso in it. In the case of *R. v. Hill* (d), it is the very point established and settled, that the general averment is not sufficient, and that it must be averred, that the defendant had not the qualifications mentioned in the statute. In the case of *Bluet q. t. v. Needs*, the general averment of the defendant's not being qualified was holden sufficient in an action, though insufficient in a conviction (e). The distinction is obvious between an action and a conviction; and there it was agreed, and is given as the reason why it is not good upon a conviction, that it must be made out before the justice, and he must return, that the defendant had no manner of qualification. I take the point to be settled by the constant tenor of all the authorities; and I think upon very good reasons" (f). Mr. J. *Denison* added, that it was not always sufficient to lay the offence in the words of the act of parliament.—The conviction was quashed.

Want of negative allegations in information not helped by evidence.

In the foregoing cases, the defect, in omitting to negative the exceptions, occurred both in the information and in the evidence. Whether this is necessary in the evidence, we have inquired in its proper place; but that it was indispensable in the information, when that formed part of the conviction, and that the omission of it *there* was not cured by any statement in the evidence, followed from what has been before laid down as to the necessity of setting forth there every circumstance material to the jurisdiction. Indeed, this might be inferred from what is suggested in some of the preceding decisions; but is rendered indisputable by an authority expressly in point,

(d) *Ante*, p. 234.

(e) *Com. 525*. But Mr. Justice Foster, in the case of *R. v. Jarvis* (see the note of that case, 1 East, 647, note), declared himself of opinion that the case of *Bluet v. Needs* could not be supported; see, how-

ever, *Cook v. Swift*, 14 M. & W. 235; and *Stamp v. Sweetland*, 8 Q. B. 13.

(f) *R. v. Jarvis*, 1 Burr. 148; and see a full report of the case from a MS. note of Lord Ashburton, 1 East, 643.



as follows:—On a rule to show cause why a conviction for using a gun should not be quashed, the objection was, that the information, as set forth, did not allege specifically that the defendant was not owner or keeper of any forest, chase, park or warren. It was argued to be sufficient, if the want of those qualifications appear in any part of the record; and it did appear by the evidence as set forth, that the defendant had none of them. Lord *Mansfield*:—"This will not do; the defendant can be convicted *only of the charge in the information*; and that must be sufficient to support the conviction." The evidence, Mr. J. *Ashurst* said, must *prove*, but cannot *supply*, any defects in the information (*g*).

It is obvious, that the defendant's want of the necessary qualifications should appear to have existed *at the time* of committing the offence, and should be alleged in such a manner as to apply to that time. Accordingly, in one of the earliest cases upon this point, a conviction on 33 Hen. 8, c. 6, for keeping a gun, was quashed, because it was only alleged that the defendant *non habuisset* 100*l. per annum*, but did not say when; and he might have had an estate at the time of keeping the gun, though not at the time of the conviction; it should, therefore, have been alleged, that the defendant, *prædict. die et anno*, had not 100*l. per annum* (*h*).

Want of qualification must appear at the time of offence committed.

These determinations agree so fully in the same doctrine, as to leave no doubt of the conclusion to be drawn from them. There is, however, one case, which, since it is appealed to in the arguments of some of the former cases, as a precedent for dispensing with a specific negative of all the qualifying circumstances accompanying an offence, it may be proper to notice here more particularly, for the purpose of pointing out its precise effect.

The case alluded to is that of *R. v. Theed*, which was a conviction for obstructing an excise officer in the discharge

(*g*) *R. v. Wheatman*, Doug. 346.

(*h*) *R. v. Silcot*, 3 Mod. 281.

of his duty. The stat. 8 Ann. c. 9, s. 10, upon which it was founded, enacted that the officer, "at all times, by day or by night, and *if in the night, then in the presence of a constable*, or other lawful officer of the peace, be permitted to enter the house, &c. of persons employed in making candles as therein mentioned;" and by s. 13, a penalty of 20*l.* is imposed upon the owner obstructing such entry. In the present case, the information (*i*), after stating the defendant to be a maker of candles, and the house in question used in that business, set forth, that Caleb Wilson, being then and there an officer of and for the duties of excise, &c. (properly describing him), pursuant to, and in execution of the power to such officer given by the said statute, *upon the 30th of August*, at, &c. did lawfully enter into the said house, to take an account of the quantity of candles there made. The information then went on to state the obstruction. Upon this information, the defendant was regularly convicted of the facts therein contained. Upon the conviction being removed into the Court of Queen's Bench by *certiorari*, Mr. Lee, for the defendant, took an objection, that it did not appear that the entry of Wilson, the officer, into the house was lawful. The statute requires that, if the entry be in the night, it be in the presence of a peace officer; now here it is laid, that Wilson entered *the 30th of August*, but not said whether in the day or the night; it might be in the night, and then it was not lawful, because it is not said to be in the presence of the constable; and, if the entry was not lawful, the defendant was not guilty of an offence in refusing to permit him to take an account, &c. To this it was answered, and held by the Court, that the entry is laid in the information to have been made lawfully, and it does not appear upon the face of the information to have been wrong, and therefore the Court will not intend that it was so, when the

(i) See the conviction, 2 Ld. Raym. 1375.

information and conviction say he entered lawfully. If it had been unlawfully, the defendant would have had the benefit of his defence before the justices: the information pursued the clause of the act. The conviction was affirmed (*k*).

It is evident, upon consideration of this case, that it does not controvert the general position established by the foregoing authorities, as to the necessity of specifying negatively all the exculpatory qualifying circumstances annexed to the offence. The case adverted to, allowing that it remains unimpeached by the authorities cited, at the most only proves that the Court will not gratuitously presume a fact not raised by anything on the record, for the purpose of requiring the addition of some qualifying circumstances. A lawful entry being stated generally on the 30th of *August*, the Court would not, without any grounds, and contrary to the ordinary intendment of the words, assume the entry to be in the night, merely for the sake of raising the objection to the want of the constable's presence. If the entry had been stated to be in the night of the 30th of *August*, without also alleging that it was in company of a peace officer, it would doubtless have been bad.

The Court will not intend unlawfulness.

It may well be doubted, however, whether it is not now sufficient to negative generally the qualifying circumstances of an offence, especially if the statute uses general terms in this respect, inasmuch as by 11 & 12 Vict. c. 43, s. 14, the prosecutor need not in any case *prove* the negative of exemptions, exceptions, provisions or conditions in the statute on which the information is framed; but the defendant is to prove the affirmative thereof in his defence if he would have advantage of the same. We have seen that this course was adopted in practice as a general rule before the passing of this statute (*l*), but it

(*k*) *R. v. Theed*, 2 Ld. Raym. 1375; *S. C.* shortly reported, 1 Str. 608; 8 Mod. 319; cited in argument, *R. v. Jarvis*, 1 Burr. 148; 1 East, 645, note.

(*l*) *Ante*, pp. 121—124.

was subject to several exceptions, and since the foregoing decisions to the effect that the exceptions should be specifically negated in the convictions, two cases have occurred in which it was stated to be sufficient to use a general negative, where the proof lay on the other side. It is true that one of these cases was a penal action and not a conviction, between which a distinction has been said to prevail in this respect (*m*), but the ground of the distinction, it is submitted, is not a very substantial one, and the expressions used by the Court seem applicable to convictions as well as to actions. Thus, where a local act directed that every male person of twenty-one years, residing in or within three miles of the township, and rated to the poor-rate in the amount or possessed of lands of the value therein mentioned, should be a commissioner, and subjected to a penalty any person who should act as such without being duly qualified, and enacted that in such action the proof of qualification should lie on the defendant; it was held sufficient to allege generally that the defendant acted, "although not at the time duly qualified," and that it need not state the particulars of the disqualification. *Parke, B.*, there said, "The penalty is given for the not being 'duly qualified.' Is it not sufficient for the plaintiff to allege the case according to the words of the act, especially as the onus is thrown on the defendant to *prove* his qualification" (*n*)? To the same effect is the following case. The stat. 4 Geo. 4, c. 95, s. 30, enacts, that if any collector of tolls shall "demand and take a greater or less toll than he shall be authorized to do by virtue of the powers of any act or of the orders and resolutions of the trustees or commissioners made in pursuance thereof," he shall be liable to a penalty. A conviction under this section stated that the collector did demand and take the toll of 4*d.* for a horse and cart, for which the sum of 6*d.* was payable, the said toll of 4*d.*

(*m*) *Ante*, p. 236.

(*n*) *Cook v. Swijt*, 14 M. & W. 235.

being a less toll than he was authorized to take by virtue of the powers of any act or of the orders and resolutions of the trustees or commissioners of the said road made in pursuance thereof, contrary to the statute. It was held sufficient without setting forth the powers of the act or the orders or the resolutions whereby the toll was fixed, and the Court said:—"The question really is, whether the statute uses words which sufficiently describe an offence, for the conviction has used them, and we think it does . . . . When the offence by the statute is the taking more or less than any statute authorizes or any resolution of trustees, it is sufficient to state the sum taken, the sum legally payable, and to negative *generally* that any less sum than that has been sanctioned by statute or resolution. It should seem that it is matter of defence to produce the statute or resolution that does sanction the smaller sum, if there be one that can be produced" (o).

Notwithstanding an expression which fell from Mr. J. Denison in *R. v. Jarvis* (p), that the adjudication as well as the evidence, when the latter appeared on the face of the conviction, ought to negative all the qualifications annexed to the offence, it seems to have been afterwards the received opinion, and supported by practice, that it was not necessary; or at least that a general adjudication by the magistrate, that the defendant was not qualified, was sufficient (q). The form also given by the 3 Geo. 4, c. 23, removed all doubt on that subject and rendered such a negative allegation wholly unnecessary; and now, the qualifications annexed to the offence should be negatived only in the statement of the offence in the conviction.

With respect to the *kind* of qualifications necessary to

Argumentative  
qualification

(o) *Stamp v. Sweetland and another*,  
8 Q. B. 13; 11 & 12 Vict. c. 43, s.  
14.

(p) *Burr*. 148.

(q) See *R. v. Crowther*, 1 T. R.  
125, and the following, viz., 4 T. R.  
767; 7 *Id.* 250; 8 *Id.* 284; *Bosc.*  
35; 6 *Wentw.* 14.

not to be nega-  
tived.

be negatived, it may be proper to remark, that the rule applies only to those expressly named; and, therefore, it is not necessary to negative a mere *constructive* qualification. Thus, in a conviction on 5 Ann. c. 14, which expressly mentioned only those qualifications specified in 22 & 23 Car. 2, it was held unnecessary to negative the defendant's being lord of a manor, that being only an inferred or argumentative qualification, collected from the stat. 5 Ann. c. 14, but not expressed either in that or 22 & 23 Car. 2 (*r*).

The want of the necessary negative averments in cases within the rule is not merely a formal, but a substantial, defect, and is not therefore aided by a provision in the statute, that the conviction shall not be vacated for want of form (*s*). And it is demonstrated by the foregoing examples that the allegation, of being *contrary to the form of the statute*, will not cover the omission of any material circumstances in the description of the offence (*t*); for those words are no more than the conclusion of law, which must be warranted by sufficient premises (*u*).

It will be remembered that the rule, requiring all the exceptions annexed to the offence to be negatively set out on the face of the record, was stated to apply only to such as are *contained* in, or *incorporated* with, the *enacting* clause by which the offence is created. This distinction is sufficiently marked throughout the cases already ad-

(*r*) *R. v. Pickles*, 1 Burr. 150.

(*s*) *R. v. Jukes*, 8 T. R. 542.

(*t*) 4 Burr. 2279; 1 Burr. 679; 154, 155; 3 Mod. 280; 6 East, 417; in all which the convictions were quashed for this defect, notwithstanding the words "*contrary to the form of the statute*;" and see *Hamper's case*, 2 Hawk. c. 25, s. 10; *Rook's case*, Hardr. 20; but *vide* 1 Str. 497; Cro. Eliz. 749; Dy. 312. There is a case, *R. v. Lammis*, Skin. 562, where, in a conviction for

keeping a warehouse for low wines, the information alleged the defendant to be a common distiller, of which there was *no evidence*; but the adjudication was, that he be convicted of the said offence *against the form of the statute*; and the Court seemed to think it was well enough, by reason of those words; for it should be intended he was a common distiller, otherwise it would not be an offence; *sed cur. adv. vult.*

(*u*) 2 T. R. 222; 8 T. R. 542.

What exemp-  
tions not re-  
quired to be  
negatived.

duced in support of the rule (*x*), in all of which it is plainly signified, that those exemptions, which are the subject of distinct proviso, being matters of defence, need not be noticed in the charge; inasmuch as the absence of these does not form a constituent part of the offence, but the existence of them is a matter of extenuation, which the party accused must show himself entitled to by way of defence. This distinction seems to be now clearly established, notwithstanding the opinion intimated by Mr. Serjeant *Hawkins* (*y*), that a conviction on a penal statute ought expressly to show that the defendant is not within any of its provisoes.

Therefore, in a conviction on 3 Car. 2, c. 3 (*z*), s. 2, for keeping an alehouse without licence, it was objected, that the act contained a proviso (s. 5) exempting persons who have been punished by the former law of 5 & 6 Edw. 6, c. 25; and, therefore, that the fact of the defendant not having been proceeded against under that act should have been averred. The objection was overruled, because, as it was said, that exemption, coming in by way of *proviso*, should have been insisted upon in defence. It appeared by the conviction, that the defendant was asked what he had to say, and, therefore, the Court said it was reasonable to presume he had no such defence to make (*a*).

Exemptions in separate provisionary clause.

On a conviction for a forcible entry, on 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9, it was objected, that it should appear by the conviction that the defendant had not been three years in possession (according to sect. 7 of 8 Hen. 6, c. 9). But, by the Court, that comes in by way of proviso, and he that would have the benefit of it must plead his possession of it (*b*).

(*x*) See, in particular, *R. v. Jukes*, 461; 2 D. & R. Mag. Ca. 126.  
 8 T. R. 542; *R. v. Pratten*, 6 *Id.* (y) 2 Hawk. P. C. c. 25, s. 113.  
 559; *Wells v. Iggulden*, 3 B. & C. (z) See now 9 Geo. 4, c. 61.  
 188, 189, per Holroyd and Bayley, (a) *R. v. Ford*, 1 Str. 554.  
 JJ.; 1 East, 646; 4 D. & R. 260; (b) *R. v. Layton*, 1 Salk. 352;  
 2 D. & R. Mag. Ca. 182; 5 M. & *vide* 2 Cro. 199.  
 S. 206; *Ex parte Smith*, 3 D. & R.

For the same reason, a conviction on 9 Geo. 2, c. 23, s. 1, for retailing gin without a licence was held to be good, without an averment that it was not sold to be used in medicine, which is allowed by the distinct provision of sect. 12 (c).

Under this head may be placed a recent decision upon the Smuggling Act (8 & 9 Viet. c. 87). The 2nd section enacts, that any vessels therein described, which shall be found within certain distances of the coast of the United Kingdom, having on board tobacco not being in a cask, &c. containing 300 lbs. weight, &c. or any tobacco stalks, &c. shall be forfeited; sect. 4 enacts, that nothing in the act contained shall render any vessel of 120 tons burden liable to forfeiture on account of any tobacco coming from certain places in packages of certain weights, &c.; sect. 50, provides for the imprisonment of persons found to have been on board vessels liable to forfeiture as before mentioned. It was held by *Coleridge* and *Erle*, Js. (Lord *Denman dubitante*), that in a conviction under sect. 50, for being found in a vessel liable to forfeiture under sect. 2, as having on board prohibited goods, it was unnecessary to negative the exemptions in sect. 4 (d). The grounds of the judgment were, that the exceptions were not referred to by the enacting section, but that they were in the nature of a limitation upon it, that the 4th section was, in substance, a distinct and independent clause of exceptions, and therefore, it was for the defendant to bring himself within it by way of defence; that, in the body of the enacting clause, several exceptions were contained, which must be negatived, and as these were separated from the 4th section, it would seem to follow that the latter were intended to be matter of defence, and that the exclusion of them in the first instance was not necessary to constitute the offence. Mr. Justice *Erle* said, that he thought it very important to adhere to

(c) *R. v. Bryan*, 2 Str. 1101.

(d) *Van Boven's case*, 9 Q. B. 669.



the rule, though it was not absolutely universal, that exemptions in a distinct clause need not be negatived.

Consistently also with this doctrine, it is held, that if a subsequent statute make an exception to a former one, it is incumbent on the defendant to show, by way of defence, that he comes within the exception. For example, the stat. 22 Car. 2, c. 1 (*e*), prohibited the assembling at any conventicle, or meeting for religious worship, except according to the liturgy; but by the 1 W. & M. c. 18, ss. 1, 3, 19, persons and meetings complying with certain regulations were declared to be not liable to the penalties of the act of Car. 2. It was resolved, that, in a conviction for this offence on the 22 Car. 2, it was unnecessary to negative any of the exemptions in the stat. of 1 W. & M. c. 18; and that even an imperfect enumeration of those exemptions was wholly surplusage, and did not vitiate (*f*).

Exemptions in subsequent statute.

So we have seen that, in convictions on the former game laws, it was not necessary to negative the "being lord of a manor," that being only a qualification inferred from 5 Ann. c. 14, but not mentioned in 22 & 23 Car. 2 (*g*).

But in all these cases, a distinction must be borne in mind, between mere exceptions or provisoes not incorporated with the enacting clause and those circumstances which form a constituent part of the offence, and are in the nature of a condition precedent to its existence, although occurring in a subsequent part of the act or in a subsequent statute (*h*). In the one case, the character of the offence is altered or modified; in the other, particular classes or circumstances are excepted out of a general enactment. Thus, a local act for paving and improving a town authorized commissioners to pave new streets and to recover the expenses thereof from the owners of the

(*e*) Repealed by 52 Geo. 3, c. 155. 2 D. & R. Mag. Ca. 182; 2 B. & C. 720; *Thibault v. Gibson*, 12 M. & W. 88.

(*f*) *R. v. Hall*, 1 T. R. 320.

(*g*) 1 Burr. 150, 153; *ante*, p. 242; see *R. v. Turner*, 5 M. & S. 206; *R. v. Marsh*, 4 D. & R. 260; (*h*) See *Simpson v. Realy*, 12 M. & W. 736.

adjoining land. A subsequent section, commencing, "provided always and be it enacted," directed "that before the commissioners should cause the streets to be paved as aforesaid, they should, in the first place, give notice to the owner of every house, land, &c. adjoining the street, requiring him to pave the same, and if any such owner should for six months neglect to pave pursuant to the notice, then it should be lawful for the commissioners and they were thereby required to cause the same to be done, and to recover the expenses from such owner as therein-before mentioned." It was held, that the giving of this notice was a condition precedent to the commissioners themselves paving the streets and charging the expenses on the owner or occupier, and that it must be averred in the declaration in an action brought under the act for the recovery of such expenses(*i*). The Court did not question the doctrine of that class of cases in which it has been held that an exception not embodied in the enacting clause, but forming the subject of a distinct proviso, must be pleaded by way of defence by the party relying on it, and need not be stated and negatived by the party, whose case rests on the original enactment, but said:—"The question here is, taking both clauses together, under what circumstances were the commissioners entitled to maintain an action against the owner for his share of the expense? And it appears to us clear that they were empowered to do so, only when they had first given the notice to the owner requiring him to do the work himself. The first of the clauses (the 82nd) does, it is true, authorize the commissioners to bring the action without imposing any previous condition. But the next clause shows clearly that an opportunity is first to be given to the parties to do the work for themselves, and enacts that, in default of their doing so, then, which certainly means *then only*, it shall be lawful for the commissioners to recover the expenses in

(*i*) *Mayor, &c. of Salford v. Ackers*, 16 M. & W. 85; and see *Taylor v. Humphries*, 34 L. J., M. C. 1.

such manner as is herein (*i. e.* in the previous clause) mentioned. This clearly makes the giving the notice a condition precedent, without a compliance with which no right of action can arise; a compliance with which, therefore, on general principles must be averred by the plaintiffs" (*k*).

In *Simpson v. Ready* (*l*), Mr. Baron Alderson said:—"There is a manifest distinction between a proviso and an exception. If the exception occurs in the description of the offence in the statute, the exception must be negatived or the party will not be brought within the description. But if the exception comes by way of proviso and does not alter the offence, but merely states what persons are to take advantage of it, then the defence must be specially pleaded or given in evidence under the general issue according to circumstances." And in *Charter v. Greame* (*m*), Lord Denman said:—"The distinction may be between an exception and a proviso; the distance from the enacting part cannot be very important . . . . What are and what are not the same sections depends upon the way in which the statute is printed (*n*); what is in the same clause depends on the frame of the sentence."

(*k*) In *Clayton v. Kynaston*, 2 Salk. 574, Lord Holt said, "Where the proviso goes by way of defeasance, it must be pleaded by him that takes advantage of it, but this is not so, but alters the sense of the covenant by explaining and tying up the notice to a particular time, which would not have been understood on the general covenant, by which means it becomes a part of the covenant, so that you must plead it accordingly;" see also Com. Dig. Pleader, C. 76; *Ughtred's case*, 7 Rep. 9 b.; *Vavasour v. Ormrod*, 6 B. & C. 430.

(*l*) 12 M. & W. 736, 740, this was an action to recover a penalty for acting as a councillor for a borough, the defendant being disqualified by having an interest in a contract with the council, and it was

held on motion in arrest of judgment, that, although the Municipal Corporation Act, s. 53, enacts that no such action shall be brought except by a burgess of the borough, it was not necessary to aver in the declaration that the plaintiff was a burgess. On this case, however, being cited in the *Mayor of Salford v. Ackers*, 16 M. & W. 88, Alderson, B., said, "The principle stated in that case appears to be correct, but I begin to doubt whether we applied it properly."

(*m*) 13 Q. B. 226, 227.

(*n*) In some instances the legislature has taken notice of the numbering of the sections of statutes, as for instance in stat. 13 & 14 Vict. c. 61, s. 1; and 17 & 18 Vict. c. 176, s. 103 (Common Law Procedure Act, 1851).

In *Van Boven's* case, above referred to (o), Lord *Denman* seems to have been of opinion that the exceptions, although not incorporated with the enacting clause, should have been negatived, saying:—"The act, which is made the subject of conviction, is in its nature one which may be perfectly innocent, and the statute itself contemplates that it may be so under circumstances pointed out in sects. 2 and 4. The description of the offence in a conviction should be made complete. I am aware that in general where an offence is created by one section of a statute, and an exemption given by another, it is held unnecessary to negative the exemption, but it does not follow that where the act is in itself perfectly indifferent, it is not necessary to state all that gives it the character of an offence." The majority of the Court, however, considered that *primâ facie* an offence did appear upon the conviction, and Mr. Justice *Coleridge* delivering judgment (in which Mr. Justice *Erle* concurred) said:—"For the defendant, it has been argued that the general rule did not apply where the excepting clause did not create personal exemptions, but introduced limitations or modifications into the definition of the offence; that it was essential for the conviction or commitment fully to state all circumstances constituting an offence, and that here no offence was stated, because it could not be contended that merely for being within a league of our coast with tobacco stalks on board every foreign vessel was liable to forfeiture. *Seth Turner's* case (p), and the cases there cited, were relied on. But this case is distinguishable. Supposing that there was no such clause in the act as the 4th, it might seem a strong thing for the legislature to have passed such an act; but it could not have been contended *here*, that a vessel brought within its terms was not also within its penalty. It is clear, therefore, that *primâ facie* an offence is stated."

(o) 9 Q. B. 669; *ante*, p. 244.

(p) 9 Q. B. 80.

Lastly, the conviction must contain a direct statement of the offence specified by the act of parliament, and not merely facts amounting to a presumption of guilt, however sufficient such facts may be as *primâ facie* evidence to support a charge for the specific offence. This is better understood by the following case:—Conviction on 8 Ann. c. 18, s. 3, for selling bread under the assize (*q*). The charge in the *information* (*r*) was, that the bread wanting so much weight of, &c. was bought *in the shop* of the defendant, a common baker. The Court were of opinion, that the charge ought to have been directly of the sale of so much bread by the defendant. It is true, indeed, the Court said, that when a servant sells in his master's shop, it is good evidence of its being the master's bread (*s*); but still it is but evidence; and it is a constant rule, that what is but evidence cannot be laid in an indictment (*r*).

Specific offence must be stated, not evidence only.

## SECT. 2.—Of the Adjudication of Punishment—As to the Form of.

We are, in the next place, to consider the adjudication of punishment as it appears recorded upon the conviction.

It is obvious, from what has been stated, that the adjudication, in point of law, must be such as the premises warrant; for though the conclusion of the magistrate as to the facts is absolute, it is by no means so as to the legal consequences of those facts, which it cannot in the least alter or extend (*u*).

Must be warranted by the premises.

The judgment consists of two parts, viz. the adju-

(*q*) *The Queen v. Bradley*, 10 Mod. 155.

(*r*) Called in the report the *indictment*; but it is evident, from the case itself, that it arose upon a summary conviction.

(*s*) *Ante*, p. 72, as to informations against masters for the acts of their servants.

(*u*) *R. v. Smith*, 1 East, P. C. 183; 2 B. & P. 127; see *R. v. Lammas*, *post*, p. 251, n. (*c*).

dication of conviction, and the sentence, or award of punishment; to which may be added, as a branch of the latter, if it is pecuniary, the distribution of the penalty, and, in some cases also, the assessment of the costs. These will be treated separately in their order; but first it should be observed that, in some cases, satisfaction for the wrong done may be awarded without the infliction of other punishment on the offender, and sometimes the information may be dismissed without the imposition of any penalty or payment of any sum whatever. Thus by stat. 24 & 25 Vict. c. 96, s. 108 (*x*), on a first conviction under that act, the justice may, if he think fit, discharge the offender upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice; and by the stat. 18 & 19 Vict. c. 126, s. 1 (*y*), and 26 & 27 Vict. c. 103, s. 1 (*z*), if on the hearing of the case the justices are of opinion that there are circumstances, which render it inexpedient to inflict any punishment, they may dismiss the person charged, without proceeding to a conviction. It is also provided, by 24 & 25 Vict. c. 100, s. 44 (*a*), that they may dismiss an information for an assault, if they deem it so trifling as not to merit any punishment.

No formal style  
necessary.

There is no formal style of adjudication necessary in convictions, as in judgments at common law. It is enough, after setting out the charge, if it be said, "therefore the defendant (naming him) is convicted of the premises, or of the offence," &c., followed by an adjudication of the forfeiture, without the formal words, "therefore it is considered," &c. (*b*). It has also been held, that a judgment in these terms, viz. "that *J. S.* (the defendant), accord-

(*x*) Criminal Law Consolidation Act (Larceny), and also by the Consolidation Act (Malicious Injuries), 24 & 25 Vict. c. 97, s. 66.

(*y*) Summary jurisdiction in Larceny Act; see *ante*, p. 154, and Appendix, tit. "Larceny."

(*z*) As to servants taking their masters' corn to feed their horses.

(*a*) Criminal Law Consolidation Act (Offences against the Person).

(*b*) *R. v. Speed*, Carth. 502, *per curiam*; and *S. C.*, 1 Ld. Ray. 583.

ing to the form of the statute, is convicted," is a sufficient adjudication that he is convicted of the offence charged (c).

The words, "that the defendant is convicted," were held to be sufficient in a conviction; though the form prescribed by the statute, and intended to be pursued, used the words "duly convicted" (d).

The proper words to be used now, according to the form given by the 11 & 12 Vict. c. 43 (e), are, "A. B. is convicted before the undersigned, &c., for that he [*stating the offence*]."

In a recent case, an order under the Metropolitan Building Act, 1855, requiring the owner of a structure to take it down, was held to be invalid upon the ground that it did not contain any adjudication that the complaint, on which the order issued, was true (f).

Some doubt may be entertained whether, according to the earlier authorities, it was thought indispensable that the judgment should contain in form an adjudication of forfeiture, as well as of conviction (g); but it is superfluous to examine into those authorities on either side, since it is now fully established that the judgment must contain both; and the form, also prescribed by the 11 & 12 Vict.

Judgment of  
forfeiture ne-  
cessary.

(c) *R. v. Thompson*, 2 T. R. 18. A case is reported relative to a conviction of one as a common distiller, on the statute 3 W. & M. c. 15, for keeping a private warehouse for low wines, in which the effect of the words in the adjudication, "according to the form of the statute," is said to have been carried so far, as to supply the want of evidence of the defendant being a common distiller, which was necessary by the act, *R. v. Lammas*, Skin. 562. It appears, however, by the report itself, that no judgment was given in the case. Mr. Boscawen notices the case, with a *quære* if it be law: Bosc. 109, 110.

(d) *R. v. Jefferies*, 4 T. R. 768.

(e) See *ante*, p. 184.

(f) *Labalmondiere v. Frost*, 1 El. & El. 527; 28 L. J., M. C. 155.

(g) In the report of the case of *R. v. Chandler*, as represented in Salk. 378, it is said to have been resolved that *ideo consideratum est quod convictus est*, without *quod foris faciat*, is enough; but in the more full, and apparently more accurate, report of the same case, 1 Ld. Ray. 583, the objection made and overruled is said to have been, that the judgment was "*quod foris faciat*," without the formal words, "*ideo consideratum est*;" which the Court held to be well enough. The same case is reported, 5 Mod. 446, where the objection taken is stated to have been, that it was, "*foris facit*," instead of "*foris fecit*."

c. 34, after the adjudication of the *conviction*, adds, “and I adjudge the said *A. B.* for his said offence to forfeit and pay the sum of £——, to be paid and applied according to law” (*h*). A conviction for deer-stealing was quashed, because it was only *convictus est*, without “*quod foris faciat*” (*i*): for, though the penalty was both ascertained and distributed by the act (3 & 4 W. & M. c. 10), and that was relied on as an argument in support of the formality of the judgment (*k*), the Court said it was like a verdict without a judgment: that, although the act fixed the penalty, there must be a judgment to levy it; for every execution must be founded upon a previous judgment; and that all the precedents were so.

Though  
penalty fixed  
by statute.

It is apparent, as well from a consideration of the act alluded to as from the reasons assigned for this judgment, which has been repeatedly recognized and confirmed since (*l*), that the judgment of forfeiture was indispensable, even before the 11 & 12 Vict. c. 43, although all the penal consequence of the judgment were strictly defined by the statute creating the offence; for the statute of 3 & 4 W. & M. c. 10, as it is observed by Mr. J. *Wilmot* (*l*), in commenting upon the case, not only makes the penalty certain of 20*l.* for every offence, but appropriates the distribution of it likewise.

The same point is decided in a later case upon the authority of the foregoing. This arose upon a conviction for killing two hares, under the former statute of 1 Jac. 1, c. 27. The judgment was, “that the defendant be, and he is hereby *convicted*, &c., according to the form of the statute,” but no award of any penalty. The punishment was fixed by the statute, viz. 20*s.* for each hare, and, unless that was forthwith paid, commitment for three months. Another question which might have

(*h*) The form prescribed by 3 Geo. 4, c. 23, was to the like effect.

(*i*) *R. v. Hawks*, Str. 858; 1 Barnardis, 300.

(*k*) *S. C.*, Fitz.-Gib. 124.

(*l*) Per Wilmot, J., *R. v. Vipont*, 2 Burr. 1166; and *R. v. Harris*, 7 T. R. 238; see *R. v. Payne*, 4 D. & R. 72; 2 D. & R. Mag. Ca. 169; *post*, tit. Commitment.



arisen, viz. whether the statute was still in force, was waived; the Court being clearly of opinion, that the conviction could not be supported, for want of an adjudication of the penalty. Lord *Kenyon*, recapitulating the case of *R. v. Vipont* (*m*), said, that, notwithstanding some old cases (*n*), the judgment is an essential part in every conviction, let the punishment be fixed or not; and so it was held on the statute for dear-stealing, though the penalty there was certain (*o*).

If an express adjudication of the penalty be necessary where it is fixed by the statute itself, it must be still more indispensable where the punishment is discretionary; for in that case the conviction is manifestly imperfect, and inefficient without it. Accordingly, it was so held in the case which arose on the following proceeding:—The defendants, *Elwell and others*, were convicted on view by three justices for a forcible detainer, and were committed “till they should pay a fine to the king.” The warrant of commitment being brought up by *habeas corpus*, the Court refused to enter into the consideration of it, till the conviction itself was in Court; which being brought up by *certiorari*, the judgment therein appeared as follows: “that the said *E. Elwell*, &c. are convicted of the said forcible entry, according to the form of the statute,” &c. It then awarded, that they be committed “*quousque finem fecerint pro offensis suis prædictis*.” The warrant of commitment therefore being till the payment of a fine, which had not been assessed, the defendants were discharged from the commitment, and the conviction was quashed (*p*).

So, in a conviction on the former statute of 12 Geo. 1, c. 34 (*q*), prohibiting unlawful combinations among work-

(*m*) See next page, note (*r*).

(*n*) Salk. 371, 383, had been cited; but see note (*g*), *ante*, p. 251.

(*o*) *R. v. Harris*, 7 T. R. 238.

(*p*) *R. v. Elwell*, 2 Ld. Ray. 1514;

2 Str. 794.

(*q*) This statute is repealed by the 5 Geo. 4, c. 95. And see now 5 Geo. 4, c. 129; and 1 Deac. Crim. L. 253.

Where discretionary.

men, and inflicting imprisonment at the discretion of the justices, the conclusion was, "Thereupon the aforesaid *J. V., &c.*, are convicted before us for unlawfully, &c. (stating the offence), contrary to the acts of parliament in that case made and provided." The Court declared that the conviction was clearly bad, for want of any judgment of the forfeiture. They said, a conviction is equal to a verdict and judgment; but that this was a verdict, without a judgment (*r*).

Where a commitment under the Master and Servants Act (4 Geo. 4, c. 34, s. 3), merely adjudged the complaint to be true, and then convicted the defendant of the offence and commanded the keeper of the house of correction to receive him, to remain and be held to hard labour for a certain time; it was held to be bad, and the defendant was discharged from custody, as it did not adjudge any imprisonment (*s*). Where in a conviction under 3 Geo. 4, c. 126, s. 41 (General Turnpike Act), it was adjudged

(*r*) *R. v. Vipont*, 2 Burr. 1163, where Mr. J. Wilmot, in giving his judgment, says, that a case occurred (*R. v. Ashton*, Trin. 9 Geo. 1) on the statute 1 Geo. 1, c. 48, for destroying fruit trees, in which the judgment was only, *ideo consideratum est quod convictus est*; and, though that point was not then decided, it appears to have been the sense of the Court, that the conviction was bad on that account; *R. v. Ashton*, 2 Burr. 1166. Lord Kenyon, 7 T. R. 238, remarks, that the case is reported in Modern Cases (8 Mod. 175), but is there totally mistaken, as nine in ten, he says, in that book are. The report alluded to, however, is very consistent with what is laid down in the cases cited; for it is said, "The Court seemed clear to quash the conviction, for there ought always to be a judgment '*quod foris faciat*,' or '*quod committatur*;' for the act gives no pecuniary penalty." That case, therefore, is an authority for requiring the same adjudication of punishment, where it is corporeal only (for such was the case under

1 Geo. 1, c. 48), as where it is pecuniary; and is cited for that purpose by Mr. J. Wilmot, 2 Burr. 1166. It is singular, therefore, considering the usual accuracy of Mr. Boscawen, that in the statement of that case, as referred to by him, p. 118, which appears by the marginal note to be cited from 8 Mod. 175, it should be represented as having been held, that since there was no forfeiture for the offence, *ideo consideratum est quod convictus est* was sufficient; and so far from the case, as reported in 8 Mod. 175, being contrary to the quotation of it by Mr. J. Wilmot, as intimated in a note by the same learned writer, p. 122, it will appear upon examination to agree with it very exactly. The volume above alluded to (8 Mod.) was severely condemned by the Court in *R. v. Williams*, 1 Burr. 386; and *R. v. Harrison*, 3 Id. 1326.

(*s*) *Re Hammond*, 9 Q. B. 92; and see the observations upon that case in *Re Geswood*, 2 El. & Bl. 952.

according to the form given by the statute that the defendant should forfeit a certain sum for his offence, it was holden sufficient, without adjudging payment of that sum (*t*).

In the absence of express authority, justices have no power to postpone the time of paying a sum of money awarded by them, or to make it payable by instalments (*u*).

The same rule, requiring an express adjudication of the penalty, applies to convictions upon those statutes which assign a corporeal punishment only, as well as upon those by which the penalty is pecuniary (*v*): and where whipping is part of the sentence, the number of the strokes must be specified (*x*).

Where punishment corporeal.

And in awarding the punishment, whether pecuniary or corporeal, the magistrate should be careful not to exceed the authority given him by the statute (*y*), for, as we have seen, a conviction, if bad in part is wholly bad, and in this respect differs from an order (*z*). Where the late overseer of a parish was convicted by two justices, under stat. 17 Geo. 2, c. 38, upon complaint of the succeeding overseers, for refusing and neglecting to deliver over to them a certain book belonging to the parish, called *The Bastardy Ledger*; and the justices, after finding him guilty thereof, proceeded to adjudge "that for his offence aforesaid" (that is, in not delivering over the particular book, called *The Bastardy Book*), "he be forthwith committed to the common gaol at S., to be safely kept, until he shall have yielded up *all and every the BOOKS concerning the said office of overseer belonging to the said parish*; the Court

Where conviction bad for excess.

(*t*) *Barnes v. White*, 1 C. B. 192.

(*u*) *Parker v. Boughiey*, 3 E. & S. 43; 31 L. J., M. C. 272. By 24 & 25 Vict. c. 97, s. 52, a justice may appoint a time for payment of the penalty.

(*v*) *R. v. Vipont*, 2 Burr. 1163; *R. v. Ashton*, 8 Mod. 175; 1 Sess. Cas. 346.

(*x*) 25 Vict. c. 18.

(*y*) See *Reg. v. Barton*, 13 Q. B. 389; and *Barton v. Bricknell*, *Id.* 393, where the conviction improperly adjudged the offender to be placed in the stocks in default of payment of the costs as well as of the penalty.

(*z*) *Ante*, p. 171; see also *Cureton v. The Queen*, 1 B. & S. 208; 30 L. J., M. C. 149, 152.

held the conviction void, as to the adjudication respecting the imprisonment, for excess,—the same extending beyond what was previously required of the person convicted. And they further held, that a warrant of commitment founded on this conviction, and directing the gaoler to keep him in the terms of the adjudication, was void *in toto*, for which trespass and false imprisonment would lie against the justices, although the conviction had not been quashed (*a*).

In a conviction against four defendants, they were each adjudged to forfeit and pay a sum of money, and if the said sums were not paid, each of the defendants making default was to be imprisoned for one month, unless the said sums and the costs of conveying to the gaol each of them making default should be sooner paid. It was held that the terms of the conviction made each defendant liable to be imprisoned until he had paid the penalty and costs, not only of himself, but the other defendants, and, therefore, that there was an excess of jurisdiction. It was also held not to be a case for amendment under 12 & 13 Vict. c. 45, s. 7 (*b*).

So, where a commitment under the Master and Servants Act (4 Geo. 4, c. 34), required the keeper to receive the defendant into custody, there to remain and *be corrected*, and held to hard labour for one month, the Court held it to be bad as authorizing a punishment not warranted by the statute, which imposes only imprisonment with hard labour (*c*). It was said *arguendo* that correction was to be understood of a correction by whipping (*d*), and Lord

(*a*) *Groome v. Forrester*, 5 M. & S. 314; and see *R. v. Payne*, 4 D. & R. 72; 2 D. & R. Mag. Ca. 169; see now 11 & 12 Vict. c. 44, s. 2; and *post*, tit. Commitment, and action against Justices.

(*b*) *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28, in which Lord Campbell, C. J., said, "If the conviction had followed the directions in sect. 23 of 11 & 12 Vict.

c. 43, there would not have been any objection on this ground."

(*c*) *Wood v. Fenwick*, 10 M. & W. 195. It also varied from the conviction, which had been drawn up in accordance with the statute; see *R. v. Cavanagh*, 1 Dowl. N. S. 547; and *Re Nesbitt*, 14 L. J., M. C. 30.

(*d*) See *R. v. Hoseason*, 14 East, 605, where it was so held.

*Abinger*, C. B., said "It is clear the being 'corrected' means something beyond the hard labour, whether by whipping or otherwise, and so is out of the statute."

The justices need not upon the conviction adjudge, that if the penalty be not forthwith paid, the offender shall be committed, &c.; but may, after affirmance of the conviction upon appeal, commit the offender for refusing to pay the penalty (*e*). The form now in use under 11 & 12 Vict. c. 43 (*f*), where the penalty is to be levied by distress, states that if the penalty and costs be not paid forthwith [or on or before — next] the same are to be levied by distress, and in default of sufficient distress, the defendant is to be imprisoned.



### SECT. 3.—*Of including several Offences and Penalties in one Judgment.*

There seems formerly to have been no objection to including in one conviction several distinct offences and penalties of the same kind.

A conviction on the former game laws stated, as well in the information as the evidence, that the defendant, on three several days separately specified, kept and used steel traps, &c. to destroy game; the judgment was, that "he is convicted, and for his several offences aforesaid hath forfeited the sum of 5*l.* for each offence, making together the sum of 15*l.*, to be distributed as the statute directs." A doubt was raised, whether the defendant could legally be convicted of more than one penalty in the same conviction; and, at all events, it was contended, that the adjudication should distinguish more precisely the number of penalties of which he was convicted. But Lord *Kenyon* declared, there was no objection that the defendant had

Several penalties may not be included in one

(*e*) *R. v. Helps*, 3 M. & S. 331; (f) Sched. (I. 1); see the forms 11 & 12 Vict. c. 43, s. 27; see *post*, in the Appendix.  
tit. Commitment.

conviction unless there be but one offence with a cumulative, but, in fact, single, penalty.

been convicted of several penalties, which, he said, was the constant practice in actions, and not unfrequent in convictions; and that the word *convicted* applied to the several offences charged and proved; and, taking the whole adjudication together, it was evident enough that the words, "for his several offences aforesaid," meant the three offences charged (*g*). It is now enacted by 11 & 12 Vict. c. 43, s. 10, that every complaint shall be for one matter of complaint only and not for two or more matters of complaint; and every information shall be for one offence only and not for two or more offences; but it has been decided since this statute, that the swearing of several profane oaths on one and the same occasion is only one offence, although the offender is liable to a penalty for each oath, and, therefore, the several penalties in such case may be included in one conviction (*h*).

Several acts.

When several acts are charged to have been committed, it must depend upon the construction of the statute to which they refer, whether distinct penalties are incurred and ought to be awarded for each, or whether the several acts form but one aggregate offence, and require but one penalty.

Or offenders.

The same question is also often to be determined, in regard to the acts of *joint offenders*, who may in some cases be liable to separate penalties, sometimes to one collective penalty (*i*).

On different days.

1. As to offences consisting of several acts: if distinct and complete acts are committed on *different days*, such as the killing game on each day, no ambiguity can arise; for under such circumstances, it is clear that the offences are distinct and subject to separate penalties, as in the case just referred to. But the ambiguity arises upon a repetition of similar acts, in pursuance of one object, on the same day.

(*g*) *R. v. Swallow*, 8 T. R. 284, 286; and see *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15.

(*h*) *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15.

(*i*) See *Re Hartley*, 31 L. J., M. C. 232. As to joining several offenders in one conviction, see *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28; and *ante*, p. 73.

With regard to cases of this description, no general rule can be laid down; but the law in each case must be determined by the nature of the offence, and the manner in which the particular statute applicable to it is worded (*k*).

In the following cases it has been decided, that on the former statute 5 Anne, c. 14 (*l*), the killing several hares on the same day incurred only one forfeiture.

On same day.  
Single penalty  
for several  
acts.

Thus a conviction *super præmissis* for three penalties of 5*l.* each, on 5 Anne, c. 14, s. 4, for killing three hares, was held to be bad, where it appeared that all was done on the same day; for the statute did not give 5*l.* for every hare, it being all but one offence (*m*).

The following case, to the same effect, more explicitly points out the distinction between acts on different days, and those on the same day. Conviction on 5 Anne, c. 14, s. 4. One exception was, that the defendant was charged with so many five pounds, as he killed hares. The Court was of opinion, that the offence, for which the statute gave the forfeiture, was the keeping dogs and engines, not killing the hares. They said, "Killing never so many hares on the same day is but one offence; but if a man keep dogs and hunt several days, and kill hares, and it be laid severally, distinguishing the days, the offence is severed, and he shall forfeit 5*l.* for each" (*n*). This is agreeable to the doctrine acted upon in the case of *R. v. Swallow*, before cited (*o*). And Lord Mansfield, in a case before him (*p*), mentioned it as an established

(*k*) If a parent is convicted under 16 & 17 Vict. c. 100, ss. 2 and 9, for neglecting to have his child vaccinated, no further proceedings can be taken against him although his child remain unvaccinated; *Pilcher v. Stafford*, 33 L. J., M. C. 113.

(*l*) The words of the statute were, "If any person or persons not qualified, &c. shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnels, or any other en-

gines, to kill and destroy the game, and shall thereof be convicted upon the oath of one or two credible witnesses, by the justice, &c. the person or persons so convicted shall forfeit the sum of 5*l.*"

(*m*) *Marriott v. Shaw*, Com. Rep. 274; *R. v. Swallow*, 8 T. R. 286.

(*n*) *R. v. Matthews*, 10 Mod. 27.

(*o*) *Ante*, p. 258.

(*p*) *Crepps v. Durden*, Cowp. 640; 1 Smith's L. C. 378.

point, that killing more hares than one on the same day is only one offence. When it was said, therefore, in the case of *R. v. Gage (g)*, that a conviction for using a greyhound in killing four hares, *per quod* he forfeited 20*l.*, passed unobjected to on this ground, it may be presumed, since nothing appears in the report to contradict the supposition, that the acts were laid on different days.

In like manner, though either the fact of keeping and using a setting dog for destroying game, or of keeping and using a gun for the same purpose, was a breach of the statute, yet if a conviction stated that the defendant, on a certain day, kept and used a certain setting dog, and also a certain engine called a gun, for destroying game, the adjudication could only be for a single penalty; for going in pursuit of game with a dog and gun on the same day was but one offence(*r*).

So, on the statute 29 Car. 2, c. 7, which enacts that no tradesmen, &c. shall do or exercise any worldly labour, business or work, of their ordinary calling, on the Lord's Day; it has been held, that only one penalty can be incurred by a baker for the exercise of his calling on the Lord's Day, though it consisted in separately selling a number of different loaves(*s*).

The question, whether several acts committed on the same day make the offender liable to distinct or cumulative penalties, was much discussed in a case arising on the statute 12 Geo. 2, c. 36, which, though it relates to an action, and not to a conviction, affords a doctrine applicable to both. That act makes it unlawful for "any person to bring into this kingdom, for sale, any book or books first composed, and printed, and published in this kingdom, and reprinted in any other country," and declares, "that if any person shall import, or shall sell,

(*g*) Str. 546.

(*r*) *R. v. Lovet*, 7 T. R. 152. All the former acts relating to game are repealed by the 1 Will. 4, c. 32;

and see Deac. on Game Law, p. 13.

(*s*) *Crepps v. Durden*, Cowp. 740; 1 Smith's L. C. 649; and see *Wray v. Toke*, 12 Q. B. 499.



publish or expose to sale, any such books, knowing them to have been so reprinted, every such offender, besides forfeiting the said book or books, shall forfeit the sum of five pounds, and double the value of every book which he shall so knowingly sell," &c. In an *action* for penalties under this act, it was held that two penalties were recoverable for selling two books on the same day, provided the sales were distinct (*t*).

In an action for penalties under the London Coal Act (1 & 2 Will. 4, c. lxxvi., s. 57), whereby a penalty not exceeding 5*l.* is imposed on the seller of coals for every sack that shall be found deficient on its being weighed in pursuance of the act, it was held that where several sacks are sent out to a purchaser at the same time, under one contract, one penalty only is incurred in respect of a deficiency in weight, though every sack is so deficient; and, therefore, where seventeen sacks were so found deficient, there were not seventeen penalties incurred, but one penalty of seventeen times 5*l.* (*u*). And, as we have seen (*v*), swearing several profane oaths at one time renders the offender liable to pay a sum of money for each oath, but the offence and penalty are in truth single. And where the defendant kept at his private residence, and also at two shops in different parishes, articles liable to duties under the Assessed Taxes Act, but made no return in respect of any of them, he was held to be liable only to one penalty (*x*).

2. In the same manner, though several offenders may be (as it seems) included in one conviction for offences

Several offenders.

(*t*) *Brook q. t. v. Milligan*, 3 T. R. 509.

(*u*) *Collins v. Hopwood*, 15 M. & W. 459. The Court held, therefore, that it might be sued for in the superior courts, notwithstanding sect. 77 of the act, which directs that all penalties imposed by the act not exceeding 5*l.* shall be recovered before justices of the peace.

(*v*) Page 258.

(*x*) *Attorney-General v. McClean*, 1 H. & C. 750; 32 L. J., Exch. 101. The Lord Chief Baron on that occasion said, that the words "for each and every offence," or analogous words, are found in an act of parliament when cumulative penalties are intended to be given for each and every violation of it. See also *Apothecaries' Company v. Burt*, 5 Exch. 363; 19 L. J., Exch. 334.

jointly committed (*y*), it depends upon the wording of the particular statutes applicable to each case, and the quality of the offence, whether each person be liable to a distinct penalty, or all collectively to but one.

Where *joint*  
penalty.

On the statute 5 Anne, c. 14, s. 4, the words of which are recited in a foregoing page (*z*), it was held, that two persons cannot be convicted in separate penalties for using a greyhound (*a*). The same construction had before been put upon the act, in an action against nine persons for keeping a lurcher; in which it was determined, that only one penalty could be recovered against all (*b*).

Where *several*  
penalties.

In the foregoing cases, the offence is in its nature single; and the penalty, not being by the words of the act expressly severed, as it would if it were specifically imposed upon each person convicted, can only be forfeited jointly. But, if either the penalty be imposed by the act upon each person convicted, even where the offence would in its own nature be single,—or, if the quality of the offence be such, that the guilt of one person may be distinct from that of the others,—in either of these cases the penalties are several.

The first of the following cases affords an instance of separate penalties being incurred by an act, which is in itself single, but the punishment for which is made separate by the terms of the statute.

The former Deer-stealing Act, 3 W. & M. c. 10,

(*y*) See *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28, 32; *ante*, p. 73, n. (*t*).

(*z*) *Ante*, p. 259, n. (*l*).

(*a*) *R. v. Bleasdale*, 4 T. R. 809.

(*b*) *Hardyman v. Whitaker*, Bull. N. P. 189; 2 East, 573; and see *Marriott v. Shaw*, Com. Rep. 274, *ante*, p. 259. The case of *Partridge v. Naylor* may also be referred to, as apposite to the subject. In that case, a judgment for several penalties against three persons respectively, for impounding a distress

in several hundreds, contrary to 1 & 2 P. & M. c. 12, was reversed; and the error assigned was, that there should have been but one *5*l**, and one trebling of damages; Cro. Eliz. 480. A similar example is found in the case of *Barnard v. Gostling*, 2 East, 569, on the statute 37 Geo. 3, c. 90, s. 26. See joint notice of appeal against separate convictions of three defendants, *R. v. JJ. Oxfordsh.*, 4 Q. B. 177, *post*, Appeal.

declared, "that if any person or persons shall unlawfully course, hunt, &c. any deer, without consent of the owner, and shall be convicted thereof, *every person* so offending by unlawful hunting, &c. shall forfeit, for every such offence, 20*l*." Upon this statute it was resolved, that every person concerned in a joint act of coursing, &c. forfeited 20*l*.; and a conviction of several persons, with an award of distinct penalties against each, was held to be right (c).

The ensuing case presents an instance, in which the question as to distinct penalties was decided, by reference to the quality of the offence. From this case, though not strictly belonging to the class of summary convictions, an accurate principle of discrimination may be deduced, with reference to the present subject.

This was an information by the Attorney-General, against three persons, on the statute of 8 Geo. 1, c. 18, s. 25, for assaulting and resisting custom-house officers in the execution of their duty, and rescuing goods which had been seized. The statute declared, "that if any person or persons shall, &c. the *party* or *parties* shall, for every such offence, forfeit 40*l*." A verdict having passed against the defendants for 40*l*. each, Mr. *Buller* obtained a rule to show cause why the judgment should not be arrested, on the ground that by the act of parliament the offence was entire, and only one penalty of 40*l*. given for one and the same offence. The cases that were cited in support of the rule were those we have above noticed (d). Lord *Mansfield*:—"There is no cause of greater ambiguity, than arguing from cases, without distinguishing accurately the grounds upon which they are determined. The true reason of the cases which have been cited in support of the motion, and the distinction between these cases and the present, is this:—where the offence is in its nature single, and cannot be severed, there the penalty shall be

(c) *R. v. Drake*, 2 Show. 489.

(d) *Hardyman v. Whitaker*, Mar-

*riott v. Shaw, Partridge v. Naylor*, ante, p. 262, n. (b).

only single ; because, though several persons may join in committing it, it still constitutes but one offence ; but where the offence is in its nature several, and where every person concerned may be separately guilty of it, there each offender is separately liable to the penalty ; because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. Under the statute of 9 Anne, c. 14, killing a hare is but one offence in its nature ; whether one or twenty kill it, it cannot be killed more than once. If partridges are netted by night, two, three or more may draw the net, but still it constitutes but one offence. But this statute relates to an offence in its nature several : it is a several offence at common law ; and the statute adds a further sanction against that, which each man must commit severally. One may resist, another molest, another run away with the goods ; all these are distinct acts, and every one's offence entire and complete in its nature ; therefore, each person is liable to a penalty for his separate offence (*e*).

And whether the offence is in its nature single or joint, a joint award of one fine against several defendants is erroneous ; for it ought to be severed against each defendant ; otherwise, one who had paid his proportionable part might be continued in prison till all the others have paid theirs ; which would be in effect to punish him for the offence of another (*f*). This principle is exemplified in the following case :—

The 9 Geo. 4, c. 31, s. 27, enacts, that where any person shall unlawfully assault or beat any other person, two justices may hear and determine the offence, “ and

(*e*) *R. v. Clark et al.* Cowp. 610. The same principle of having regard to the quality of the offence, in determining whether the penalties are joint or several, when the statute is ambiguous, has been adopted in the construction of the Toleration Act, 1 W. & M. c. 18, s. 11, which inflicts a penalty of 20*l.* on any per-

son or persons who may disquiet or disturb any congregation permitted by the act. Upon this it has been decided, that several persons, for a joint disturbance, are liable to separate penalties of 20*l.* each ; *R. v. Hube and others*, 5 T. R. 542.

(*f*) 2 Hawk. c. 10, s. 16.

the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet," not exceeding, together with costs, 5*l*. Under this statute, two parties were jointly convicted before two justices of an assault, and a joint fine was imposed; which was held illegal, and the conviction bad in substance(*g*). It appears that the Court will not order justices to draw up a joint conviction, instead of several convictions of several offenders, although a joint information was laid and heard against them(*h*).

3. Although two distinct offences cannot now be charged in the information, yet it will be useful to refer to some of the old cases, as to the form under such circumstances, to illustrate the care which must be taken in copying the terms of a statute that two offences under it are not incorporated. On the Lottery Act, 22 Geo. 3, c. 47, the information of N. Barrett charged that H. Salamons, on the 27th of *December*, 1785, kept an office for *dealing* in shares of tickets in the state lottery, and did, on that day, receive of one A. a sum of 3*s*., for a share in No. 34,007, without a licence, contrary to the form of the statute; and the said H. S., on the said 27th of *December*, at the same place, did receive of the said A. 3*s*. for *registering* a lottery ticket then undrawn, without a licence. After stating the evidence of the witnesses, the conviction proceeded to adjudge the said H. Salamons guilty "of the offence charged upon him in and by the said information of the said N. Barrett, and that he be convicted of the said offence charged upon him in and by the said information, according to the form of the statute in that case made and provided: and the justices likewise awarded him to forfeit and pay for his *said* offence, 100*l*." By the Court:—"The conviction is bad, for the duplicity of the charge: the defendant is charged with *dealing* in

Two or more  
offences  
charged.

(*g*) *Morgan v. Brown*, 4 A. & E. C. 31; 21 L. J. Mag. Ca. 112; and 515; 6 Nev. & M. 57, S. C. see *R. v. Turk*, 10 Q. B. 540.

(*h*) *Re Clee and another*, 1 B. C.

shares of lottery tickets, and with *registering*, without a licence; and he is convicted of the said offence, so that it does not appear of which offence he is convicted. A conviction must be good in all its parts; the information must be supported by the evidence; and the judgment must be supported by both. Here the defendant is charged with two distinct offences, each of which would subject him to a separate penalty; and, supposing they could both have been included in one conviction, which is to be doubted, the defendant should have been convicted of both. A judgment for too little is as bad as a judgment for too much" (i).

So, where a conviction under 11 Geo. 4 and 1 Wm. 4, c. 64, s. 14 (for the general sale of beer, &c., by retail), charged the defendant with the offence of keeping his house open for the sale of beer, and selling beer, and suffering the same to be drunk and consumed in the house at an unlawful time, and convicted him in the penalty of 40s. as upon a single offence; it was held, that the conviction was bad, because it included more than one distinct offence, and that trespass lay for levying the penalties by distress (k).

In a subsequent case, however, on the statute 19 Geo. 3, c. 50, the conviction set out a complaint and information, that one T. A., an officer of excise, discovered, in the custody and possession of the defendant, certain private and concealed vessels for making low wines, and other materials for distillation, viz. one head, six wash backs, &c. (*each* of which makes the person, in whose possession they are found concealed, liable to a penalty of 200*l.*), and alleging, that defendant, for the said private still, forfeited one penalty of 200*l.* After stating the evidence, which corresponded exactly with the information, it was

(i) *R. v. Salamons*, 1 T. R. 251; and see *Ex parte Baker*, 7 El. & Bl. 697; 26 L. J., M. C. 193.

(k) *Newman v. Bendyshe and another*, 10 A. & E. 11; 2 P. & D.

340, S. C.; see *Lockwood v. The Attorney-General*, 10 M. & W. 464, 468; *Wray v. Toke and another*, 12 Q. B. 492.

adjudged as follows, viz.: "that the said C., for his *said offence*, forfeit 200*l.*" The Court thought this judgment was not exposed to the objection in that of *R. v. Salamons*, just mentioned; because here the *information* having specified for what particular offence the penalty was claimed, viz. for possessing a concealed still, there was no uncertainty, as in the former case, to what the penalty was referable(*l*).

And, if an offence is alleged, accompanied with a statement of some act not punishable by summary conviction, yet a judgment, that the defendant is convicted for the *said offence*, is good, as referring to that fact, which is the proper subject of this mode of punishment. Thus, a conviction on the former act, 3 & 4 W. & M. c. 10, against deer-stealing, charged, that the defendant, with force and arms, *broke and entered* a park where deer were usually kept, without consent of the owner, and then and there *unlawfully coursed one fallow deer*, &c.; and the judgment of conviction and penalty were *for the offence aforesaid*. It was objected, that there was no statute against breaking and entering the park, and that the penalty, being for the aforesaid offence generally, could not be distinguished. But the objection was overruled, for the Court said the *offence* was hunting the deer (*m*).



#### SECT. 4.—*Of the Penalty, Form of Award, and Distribution in the Conviction.*

In awarding the penalty, whether pecuniary or corporeal, it is essential that it be certain and determinate, and such as is warranted by the statute. We have seen that a conviction, adjudging that the defendants were convicted, Penalty must be certain.

(*l*) *R. v. Chandler*, 14 East, 267; 4th objection.

(*m*) *R. v. Drake*, 2 Sho. 489; 1st objection.

and awarding an imprisonment "till they should pay a fine to the king," without ascertaining its amount, was held to be bad (*n*). So, a conviction awarding the defendant to pay 15*l.*, together with the charges previous to and attending the conviction, was quashed for uncertainty, and the commitment upon it discharged; for the imprisonment, in that case, was merely a mode of enforcing payment, and, while the sum remained uncertain, the defendant could not be released (*o*). So, where the statute enabled the convicting magistrate to levy as well the penalties as the costs and charges of the distress, &c., a conviction, adjudging that the defendant had forfeited so much for penalties, "together with the reasonable charges of recovering the same," was set aside as defective, in not ascertaining the exact sum (*p*). By 11 & 12 Vict. c. 43, s. 18, whenever costs are given to either party, the sum allowed for them is to be specified in the conviction or order of dismissal (*q*).

Where a statute authorizes the magistrate to award damages (*r*), not exceeding a certain sum, to the party aggrieved, the sum awarded should be in proportion to the amount of the injury, and the magistrate will not be justified, without any inquiry as to the real damage sustained, in awarding the full sum mentioned in the statute. Thus, where on a conviction under the former Malicious Trespass Act, 1 Geo. 4, c. 56, which directed that the offending party "should forfeit and pay to the person aggrieved such a sum of money as should appear to the justices to be a reasonable satisfaction and compensation for the damage committed, not exceeding in any case the sum of 5*l.*," and a magistrate convicted a party in the full penalty of 5*l.* for cutting and taking away a post or pale out of

(*n*) *R. v. Elwell*, 2 Str. 794; *ante*, p. 253.

(*o*) Per Lord Mansfield, *R. v. Hall*, Cowp. 60.

(*p*) *R. v. Symonds*, 1 East, 189; *R. v. Payne*, 4 D. & R. 72; 2 D. &

*R. Mag. Ca.* 169, *post*.

(*q*) See also ss. 21—24, 26, 27.

See *post*, Costs.

(*r*) For instances of which, see the Criminal Consolidation Acts, 24 & 25 Vict. cc. 96, 97.



the prosecutor's fence, and there was no statement that the post carried away was of that value, Mr. Justice *Best* said, "The magistrates think they have power to award the sum of 5*l.* at all events; but it is not so. They are to ascertain what the amount of damage in such case is, and award reasonable compensation or satisfaction to the party injured, according to the amount of injury proved. They cannot go beyond the 5*l.* limited by the statute; but they are not to award 5*l.*, unless damage is proved to that amount"(*s*).

Where a discretion is given to the magistrates in awarding a corporeal punishment(*t*), the same degree of certainty is requisite, as where the penalty is pecuniary; and that which is discretionary must be distinctly ascertained by the conviction. Thus, the former Vagrant Act, 17 Geo. 2, c. 5, having empowered the magistrate to order an incorrigible rogue to be employed, after his imprisonment, in his majesty's service, either by sea or land,—a conviction under that act(*x*) was deemed invalid *in toto*, because the judgment only ordered the defendant, after his imprisonment, "to be sent and employed in his majesty's service," without determining whether by sea or land(*y*).

Whatever is made by the statute a constituent part of the punishment, and not left in the discretion of the magistrate, must necessarily form part of the judgment expressed in the conviction(*z*). Thus the statute 20 Geo. 2,

(*s*) *R. v. Harpur*, 1 D. & R. 222. The conviction was not set aside on this ground, but for not showing an offence within the statute. See *post*.

(*t*) As to whipping, see p. 255.

(*x*) The conviction was for an offence, to which the provisions of the Vagrant Act were extended by 39 & 40 Geo. 3, c. 50, but the punishment was under the former act. See now 5 Geo. 4, c. 83, and 5 Chitty's *Burn*, tit. "Vagrant."

(*y*) *R. v. Patchett*, 5 East, 341.

(*z*) See *Whitehead v. The Queen*, 7 Q. B. 582, in which judgment of transportation for seven years for stealing in a dwelling-house to the value of 5*l.* under 7 Will. 4 & 1 Vict. c. 90, was reversed on error, the statute authorizing the punishment of transportation for any term not exceeding fifteen years, "nor less than ten years;" and *R. v. Fletcher*, Russ. & Ry. 58, in which judgment of death was passed on a prisoner convicted of murder, and the judge omitted to order dissec-

Corporeal  
punishment.

What included  
in the judg-  
ment.

c. 19, for the better regulating of servants in husbandry, authorizes the magistrate, upon conviction, to punish the offender by commitment to the house of correction, there to remain and *be corrected*, and held to hard labour for a term not exceeding one month; the Court of Queen's Bench were of opinion, that in a conviction and commitment under this statute, *correction*, by which they understood whipping, was a necessary part of the judgment (a).

Not to mix penalties by different statutes.

In affixing the punishment of an offence, which may be proceeded against upon one or other of two different statutes, care must be taken not to blend the penalties under both (b). The necessity of attending to this particular is exemplified by the following case:—

The statute 20 Geo. 2, c. 19, relating to servants in husbandry, empowers the magistrate, upon complaint by the master of any misdemeanor, miscarriage or ill-behaviour in his service, to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour, not exceeding *one* calendar month. A subsequent statute, 6 Geo. 3, c. 25, for regulating apprentices and persons working under contract, enacts, that if any labourer, or other person, after

tion according to statute 25 Geo. 2, c. 37, s. 2; see also *R. v. Ellis*, 5 B. & C. 395. By 11 & 12 Vict. c. 78, s. 5, if judgment on an indictment is reversed by a Court of Error, such Court may pronounce the proper judgment or remit the record to the Court below, in order that the Court below may pronounce the proper judgment.

(a) *R. v. Hoseason*, 14 East, 606; see *Wood v. Fenwick*, 10 M. & W. 195. In *Whitehead v. The Queen*, *supra*, as reported in 7 Q. B. 582; 14 L. J., M. C. 166, Lord Denman said, "I remember an action tried before Gibbs, C. J., brought against Alderman Wood by a man whom he had sentenced to be imprisoned, and it was contended, that the imprisonment was illegal, because the

sentence did not also direct that he should be whipped." Gibbs, C. J., said to the jury, "Give the plaintiff the full damages he has sustained by reason of not having been whipped;" see 24 & 25 Vict. c. 96, ss. 4, 7—9; 27 Geo. 2, c. 6; 31 Geo. 2, c. 11; 6 Geo. 3, c. 25; 57 Geo. 3, c. 122; 58 Geo. 3, c. 51; 4 Geo. 4, c. 34. By stat. 1 Geo. 4, c. 57, judgment of whipping can now in no case be awarded against a female.

(b) An instance of error of this kind is found in *R. v. Clarke*, Cowp. 35; and see *Charter v. Greame*, 13 Q. B. 216; and care must be taken not to convict under one statute, the summons being under another, see *R. v. Brickhall*, 33 L. J., M. C. 157; *ante*, p. 196.

contracting for any time, shall leave his service, or be guilty of any other misdemeanor, he may, upon complaint, be committed to the house of correction, for any term not exceeding *three* nor less than *one* month. The Court of Queen's Bench had occasion to consider the form of a precedent, which, blending the two acts, awarded a commitment, *correction and hard labour* (as in the statute 20 Geo. 2, c. 19), but assigned the time of imprisonment *three* months, pursuant to the statute 6 Geo. 3, c. 25,—and not to that of 20 Geo. 2, c. 19, whereby the imprisonment is only for *one* month. The Court, upon considering both the acts, were of opinion, that the punishments inflicted by each could not be mixed, and that the form alluded to was incorrect (c).

So, where the conviction was under the statute 4 Geo. 4, c. 34, s. 3, against a servant for absenting himself from his service, and adjudged according to that statute that he should be imprisoned and kept to hard labour for one month, but the commitment, following the words of another statute in *pari materiâ* (20 Geo. 2, c. 19, s. 2), required the keeper to receive him into custody, there to remain and *be corrected* and held to hard labour for one month; the commitment was held to be bad, as varying from the conviction and authorizing a punishment not warranted by the statute (d).

If the penalty appears to be properly ascertained by the conviction, the Court of Queen's Bench will not inquire when it was fixed; for, if determined at any time before the conviction is formally drawn up and returned, it will be sufficient upon that return (e).

Time of fixing  
penalty not  
controvertible.

(c) *R. v. Hoseason*, 14 East, 605. The particular conviction then before the Court was not exposed to this objection, because the time of imprisonment therein was for one month, which is authorized by both statutes; see 5 Chitty's *Burn*, tit. "Servants," and the forms given.

(d) *Wood v. Fenwick*, 10 M. &

W. 195.

(e) 2 Ld. Raym. 1514; *R. v. Layton*, 1 Salk. 352; Lambard, 151. What is said by the Court in *R. v. Dimpsey*, 2 T. R. 97, *post*, that a judgment is an entire thing, and that part cannot be given at one time, and part at another, does not invalidate the position laid down in

Contingent  
punishment.

Where a statute inflicts a penalty, and orders the offender to be committed, or set in the pillory (*f*), on failure of payment, or of sufficient distress, it is sufficient to adjudge the penalty and distribution, without noticing the contingent punishment (*g*).

Mitigated  
penalty.

The magistrate can, in general, impose no other than the precise penalty directed by the statute; and has not, as incident to his jurisdiction, any power to postpone its payment, to make it payable by instalments, or to lessen it (*h*). A judgment for too little is as faulty as a judgment for too much (*i*). The discretionary power of *mitigating* the penalty, therefore, only exists in cases where it is expressly vested in the magistrates by particular statutes (*k*), and this is further limited by a recent statute (27 & 28 Vict. c. 110), which enacts, that where any *public* act of parliament provides, that, in respect of any offence therein mentioned, a penalty is to be imposed of not less than a particular sum of money, or of not less than a certain term of imprisonment, or other punishment therein specified, it shall not be lawful for the justices or Court, having cognizance of such offence, to mitigate such penalty below the limit specified in that act of parliament, in pursuance of any power of mitigating penalties conferred by any *local* or *private* act of parliament.

the cases above cited; for that was said with reference to an omission in the judgment, as returned to the *certiorari*, in not appropriating the penalty, and was in answer to a suggestion from the bar, that the distribution might be made afterwards.

(*f*) By 56 Geo. 3, c. 138, the punishment of the pillory was restricted to cases of perjury, or subornation of perjury; and now, by 7 Will. 4 and 1 Vict. c. 23, the punishment is entirely abolished.

(*g*) *R. v. Chandler*, Carth. 501, 5th objection; 5 Mod. 446, S. C.

(*h*) *Ante*, p. 255.

(*i*) *R. v. Salamons*, 1 T. R. 252; *Whitehead v. The Queen*, 7 Q. B. 582; *ante*, p. 269, n. (*z*).

(*k*) See the preamble to the act of 51 Geo. 3, c. 120. By 2 & 3 Vict. c. 71, s. 35, power is given to the metropolitan police magistrates to mitigate penalties. When the penalty has been mitigated, this ought to be stated in the conviction, for otherwise it cannot appear to the Court, on appeal, how or in what degree the magistrate has exercised the authority with which he is invested. Thus the conviction should first adjudicate the whole penalty inflicted by the sta-

A conviction, as we have seen, must be good in all its parts, and differs in this respect from an order (*l*). The judgment, in particular, being an entire act, cannot be severed; and, therefore, if it be bad as to part, the whole is thereby vacated, although the several parts may be in their nature distinct. Thus, a conviction for not accounting for tolls, and also for not paying over the receipts, being defective as to the latter offence, for not specifying the sums, though correct as to the former, was quashed altogether (*m*).

Judgment cannot be severed.

There is one instance, indeed, of a conviction for harbouring smuggled goods, including both a judgment for the penalty and condemnation of the goods in which the former part, viz. for the penalty, not being supported by the evidence, was set aside, and the conviction allowed to stand for the remainder: but that is stated to have been by consent (*n*). And on a conviction as an incorrigible rogue, already mentioned, where the judgment ordered the defendant to be imprisoned, &c., and afterwards sent into his majesty's service,—the latter part being defective for not specifying the particular service,—it was held that the whole conviction must be quashed, though there was no objection to that part which directed the imprisonment; for, when it was suggested that the defective part of the judgment need not vitiate the rest, which was valid and distinct, the Court answered, that the judgment was entire, and could not be split; and accordingly the rule for quashing the conviction was made absolute generally (*o*).

tute; and then, in a separate sentence, state to what inferior sum he has mitigated it; see 1 Burn's Justices, tit. "Conviction," p. 997, and *Re Boothroyd*, 15 M. & W. 10, per Pollock, C. B.

(*l*) *Per Curiam*, 1 T. R. 251; so a commitment in execution, if bad in part, is bad for the whole; see *ante*, p. 177; and *post*, "Commit-

ment;" *Ex parte Addis*, 1 B. & C. 90; *Goff's case*, 3 M. & S. 203; *Morgan v. Brown*, 4 A. & E. 515; see also *Skingley v. Surridge and another*, 11 M. & W. 503, 516.

(*m*) *R. v. Catherall*, 2 Str. 900.

(*n*) *R. v. Hale*, Cowp. 728.

(*o*) *R. v. Patchett*, 5 East, 344; 1 Smith's Rep. 547, S. C.; *ante*, p. 269.

SECT. 5.—*Of appropriating the Penalty, &c. in the Conviction.*

1. <i>Penalty</i> .....	274		2. <i>Amount of Injury</i> .....	282
			3. <i>Restitution of Property</i> .....	283

Distribution of  
penalty, how  
awarded.

The appropriation of the penalty is either fixed by the statute itself, or it is left to the discretion of the convicting magistrate to assign the object, or proportion, according to which it is to be disposed of. In the former case, that is, where the statute itself makes a complete and determinate disposal, the conviction need not contain any express award to that effect. Thus, on the old deer-stealing Act, 3 & 4 W. & M. c. 10, which ordered the penalty to be divided equally between the poor of the parish and the party grieved, it was held sufficient to award a forfeiture of the penalty, without proceeding to specify the application (*p*). This is the usual mode, wherever the statute applies the penalty with such certainty, that the judgment can be unequivocally carried into effect by reference to the act alone (*q*). The form of the judgment in such cases usually awards the penalty to be distributed as the act directs (*r*).

By the general form now in use the penalty is directed "to be paid and applied according to law" (*s*). This form is applicable to all cases and therefore to a conviction under the Game Act, although it is thereby enacted that one moiety shall be paid to the informer, and the other shall go to the overseers of the poor, and be paid to one of the overseers, or to some other parish officer appointed by the justice (*t*).

(*p*) *R. v. Barret*, 1 Salk. 383.

(*q*) 8 East, 573.

(*r*) See *R. v. Thompson*, 2 T. R. 18, where the conviction was confirmed, without any objection to it on account of its being in that form. At that time, the penalty was given by the act, half to the informer, and half to the poor, though it was after-

wards altered, and given wholly to the informer.

(*s*) 11 & 12 Vict. c. 43, Schedule (I. 1).

(*t*) *R. v. Hyde*, 21 L. J., M. C. 94; and see *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28; *R. v. Johnson*, 8 Q. B. 102.

So, where a conviction under 17 Geo. 3, c. 56, s. 10, for being in possession of materials suspected to be purloined or embezzled, directed that the penalty should be paid, applied and distributed as the law directs, according to the form and direction of the statute in such case made, it was held that as the application of the penalty was fixed by the statute, and the justices had no discretion therein, the conviction was sufficient in directing it to be paid, &c. as the law directs (*u*). In that case, *Pollock*, C. B., said, "I think the true rule is, that where the justices are to exercise a discretion, they must show on the face of the conviction that they have done so; but if no discretion is vested in them, then it is sufficient for the conviction to state that the penalty is to go as the law directs" (*x*).

But where there is a material variation, in the appropriation of the penalty, from the directions of the act of parliament, the conviction will be bad. Thus, where a conviction was framed on the new Game Act, 1 Will. 4, c. 32—which directs the penalty to be paid to the parish officer, and by him to be paid over for the use of the county rate (but which, by the subsequent act of 5 & 6 Will. 4, c. 20, s. 2, is directed, as to one moiety, to be paid to the informer, and the other as before)—and adjudicated the whole penalty to be paid to the overseer, to be applied according to the direction of the statute in such case, &c.; it was held, that the conviction was bad (*y*). So, where the penalty was ordered to be paid to a party who was not the party authorized by the statute to receive it, and in the event of non-payment imprisonment was awarded, the conviction was held to be invalid (*z*).

And where any discretion is vested in the magistrate, either as to the object or rate of appropriation, or where any sum is to be assigned by way of satisfaction or reward, the judgment must in such cases specifically appoint the

Where specific  
distribution  
is necessary.

(*u*) *Re Boothroyd*, 15 M. & W. 1. W. 335.

(*x*) *Id.* p. 10.

(*z*) *Chaddock v. Wilbraham and another*, 5 C. B. 645.

(*y*) *Griffith v. Harries*, 2 M. &

manner and proportion in which the penalty is to be distributed.

Thus, by the Mutiny Act, 26 Geo. 3, c. 10, the penalty for not receiving a soldier according to billet, is directed to be applied, in the first place, to make satisfaction to the soldier for his expenses, and the remainder to the overseers of the parish. A conviction under this act, adjudging only that the defendant had forfeited 5*l.*, "to be disposed of as the law directs," was deemed irregular: for in that case the distribution of the penalty was held to be a necessary part of the judgment, which ought to appear on the record (*a*); not merely in the general terms of the act, but specifying the exact sum (*b*).

Specification of  
party entitled  
to.

In like manner, where the amount is ascertained by the act, but the description of persons entitled is the subject of the magistrate's selection, or even where both the amount and the description of persons are determined, but the individuals answering that description are uncertain, in each of these cases, the magistrate must exercise his discretion in these particulars at the time of the adjudication, and make the requisite selection, by name, of the party entitled; and that must appear upon the record, so as to leave no part of the judgment or execution liable to uncertainty.

This is exemplified in the case of a conviction under the statute 42 Geo. 3, c. 119, s. 5, prohibiting unlawful lotteries; which statute directed the penalty to be applied, one-third to the king, one-third to the informer, and the other third to the person apprehending or securing the offender. The conviction in question stated the offender to have been *brought before* the convicting magistrates by W. C. and J. P., two of the beadles of the parish. The adjudication, after declaring the defendant to be convicted of the offence, proceeded in these terms, viz.: "for which

(*a*) *R. v. Dimpsey*, 2 T. R. 96;  
and see *Re Boothroyd*, 15 M. & W.  
1, 10.

(*b*) See *R. v. Symonds*, 1 East,  
189.



said offence I do adjudge her to forfeit and pay the sum of 100*l.*, to be applied and distributed, when paid, as the law doth direct." This case was very fully considered, upon the objection, that the person entitled to the last third of the penalty, for apprehending and securing the offender, should have been distinctly named and pointed out by the magistrate. It was contended, in answer to the objection, that the persons by whom the offender was stated to have been "brought before the magistrates" sufficiently answered that description; or, if not, that the unappropriated portion remained in the crown. But the Court decided, that the objection was well founded; that the application of the penalty should have appeared distinctly upon the face of the conviction; and that it was bad, for the uncertainty in the objects of the distribution (c).

So, in *R. v. Smith* (d), where the defendant was con-

(c) *R. v. Seale*, 8 East, 568, 573. Note, the statute 32 Geo. 3, c. 53, regulating the seven public offices in *Middlesex* and *Surrey*, provided that the penalties levied by the justices, under that act, should (except the informer's share) be paid to the receiver appointed by the act. This clause was held only to warrant the magistrates in paying the money to the receiver, but did not vary the form of the conviction made at those offices, per Buller, J., 3 T. R. 341; see now 10 Geo. 4, c. 44; 2 & 3 Vict. c. 71; and 2 & 3 Vict. c. 94, for regulating the police of the metropolis. By sect. 47 of 2 & 3 Vict. c. 71, when penalties are made payable to any person, except to the informer, and are recovered before a metropolitan police magistrate, they shall be adjudged to be paid to the receiver for the metropolitan police district; see *Wray v. Ellis*, 1 El. & El. 276; 28 L. J., M. C. 45. By 11 & 12 Vict. c. 43, s. 31, the constable, or other person to whom a warrant of distress is directed, shall be thereby ordered to pay the amount to be levied thereunder to the clerk of the division in which

the justice issuing the warrant usually acts: if a person convicted in any penalty, or ordered by a justice to pay a sum of money, pays it to a constable or other person, it is then to be paid over to such clerk; if any person committed to prison on any conviction or order for non-payment of any penalty or sum thereby ordered to be paid, desires to pay the same and costs before the expiration of the time for which he shall be ordered to be imprisoned, he is to pay it to the gaoler or keeper of the prison, who is then to pay the same to the said clerk. All sums so received by the said clerk are forthwith to be paid by him to the party or parties to which the same are to be paid according to the directions of the statute on which the information was framed; and if the statute contains no such directions, then to the treasurer of the county, riding, &c. for which such justice shall have acted. Provisions are also made by the same section for insuring regularity in accounting for penalties; see also *post*, p. 310.

(d) 5 M. & S. 133.

victed, on 12 Geo. 3, c. 61, s. 18, for conveying, at one time, a larger quantity of gunpowder than is allowed by that statute, which authorizes the seizure of such gunpowder, and directs that, upon conviction of the offender, the same shall be forfeited for the use of the person making the seizure;—the justices having adjudged the gunpowder to be forfeited “to the use of the aforesaid J. G., the person who seized the same,” without showing previously, by the evidence, that there had been in fact a seizure, and that he was the person seizing, the Court quashed the conviction. But if the form given by the statute is followed, it is sufficient, although it does not thereby appear who is the informer, to whom, by the statute, half of the penalty is given (*e*).

Informer's  
share.

It is the policy of most of the statutes inflicting penalties, to give part of the penalty to the informer (*f*). The proportion is now generally one-half. At first it was commonly one-fourth, afterwards one-third by later statutes, and lastly, one-half. Even this large proportion, says an eminent writer on the penal statutes, seldom hath its effect (*g*).

To the poor of  
the parish  
where, &c.

Since the 18th year of *Elizabeth* (when the first instance

(*e*) *R. v. Johnson*, 8 Q. B. 102; and see *Wray v. Toke*, 12 *Id.* 492.

(*f*) The policy of this expedient is enforced in a preamble to a clause in an old statute, 25 Hen. 8, c. 9, concerning pewterers; which, after reciting a former act, proceeds to take notice, “that forasmuch as the forfeiture therein is to the only use of the king’s highness, and that any party searching or finding the articles there condemned is not entitled to have any benefit thereby, it hath not been known that any person or persons have taken any pains to search or make inquiry thereof, by reason whereof divers evil-disposed persons, &c. daily go about from village to village, selling such pewter and brass, which is not good, and using such deceivable weights and beams, as they did before the

making of the said act, to the great hurt and detriment of the king’s subjects;” for which reason, it is enacted by that clause, that half the forfeiture shall belong to the informer. By 26 & 27 Vict. c. 113 (prohibiting the use of poisoned grain or seed), s. 5, the justices have power to award to the informer or prosecutor (not being a police-constable or peace-officer) any portion not exceeding one moiety of the penalty recovered under that act, and he or any person giving evidence is to be freed from penalties he may have incurred under it, if he has laid the information or given the evidence before an information has been laid against him for such penalties.

(*g*) Barrington’s Observations on the Statutes, 207, n. (*a*).

is found), it has been a frequent practice to appropriate some part of the penalty to the *poor* of the parish where the offence is committed; and the following points merit attention, relative to the proper form of adjudication in such cases.

In a conviction under the statute 5 Anne, c. 14, which appoints half the penalty to the poor of the parish where the offence happens to be committed, it was held to be no objection, that the offence was alleged to be *apud villam de Mottram Andrews*; for it was said by the Court, that if there be such a parish as *Mottram Andrews*, it shall be intended to be co-extensive with the *vill*; but if the offence was committed in a *vill* which was extra-parochial, then the informer shall have the whole (*h*).

*Vill* presumed co-extensive with *parish*.

If such an objection could now be got over at all, consistently with what has since been laid down, it must be where the adjudication of the penalty, as in that case, is merely to be distributed or applied as the statute or the law directs; for it has been held that an award expressly to the poor of a *township*, where the statute speaks of a *parish*, is irregular.

To poor of *township* bad.

This was so decided in the case of a conviction on the Mutiny Act, 35 Geo. 3, c. 6, s. 68, the 85th section of which orders that the penalty, after making satisfaction as therein ordered, shall be paid to the overseers of the *parish* where the offence is committed. The act also prescribes a short form of conviction, concluding thus:—"and I do hereby declare and adjudge, that the said A. B. hath forfeited the sum of £—— for his offence aforesaid, to be distributed as the law directs, according to the statute in that case made and provided." In the case in question, the offence was stated "at *Ullesthorp*;" and the judgment was in these terms, viz.: "I do hereby adjudge and direct, that out of the said sum of 40s. so forfeited, 15s. be applied in making satisfaction to, &c.; and that 25s., the re-

(*h*) *R. v. Wyatt*, 2 Ld. Raym. 1478; and see *Re Boothroyd*, 15 M. & W. 1, 7.

mainder, be paid to the overseers of *the township of Ullesthorp aforesaid*, for the use of the poor of the said *township*, according to the statute," &c. It was alleged and admitted to be the fact, but it did not appear upon the face of the conviction, that *Ullesthorp* was a township supporting its own poor. But the Court, without admitting that if the fact had so appeared it would have supported the conviction, were clearly of opinion that, as it stood, it was irregular (*i*).

Where however the conviction ordered the penalty to be applied as the law directs, it was held to be no objection that the conviction purported to have taken place in a township, and the statute directed that the penalty should go to the poor of the parish (*k*).

And where a defendant had been convicted on stat. 10 Geo. 2, c. 28, for causing to be acted, at a certain place called the *Cobourg Theatre*, for gain and reward, a certain entertainment of the stage, &c.; and from the evidence stated in the conviction, it appeared that the *Cobourg Theatre* was in the parish of *Lambeth*, and the adjudication of the penalty was to the poor of the parish of *St. Mary, Lambeth*; it was held that this was no variance,

(*i*) *R. v. Priest*, 6 T. R. 538.

(*k*) *Re Boothroyd*, 15 M. & W. 1, 7, 10. A penalty under the Alehouse Act (9 Geo. 4, c. 61) imposed by justices of a borough, which has a commission of the peace, but no Court of Quarter Sessions, is payable to the treasurer of the county in which the borough is situate, and not to the treasurer of the borough on account of the borough fund; *Reg. v. Dale*, 1 Den. C. C. R. 37; 22 L. J., M. C. 44; 17 Jurist, 47; see *Brown v. Nicholson*, 5 C. B., N. S. 468; 28 L. J., M. C. 49. Under 26 & 27 Vict. c. 97, s. 7 ("The Stipendiary Magistrates' Act, 1863"), certain penalties shall be paid to the treasurer of the local board of health (or any local board under

the Local Government or Local Improvement Act), to be carried to the credit of the improvement rate. The Merchant Seaman's Act, 7 & 8 Vict. c. 112, is an act relating to trade or navigation, and therefore penalties recoverable under it are payable to the Merchant Seaman's Society as being within the provisions of 5 & 6 Will. 4, c. 166, which provides for the application of penalties recovered under any act "relating to the customs, excise or post-office, or to trade or navigation;" see *Seamen's Hospital Society v. The Mayor, &c. of Liverpool*, 4 Exch. 180; and *Wray v. Ellis*, 1 El. & El. 276; 28 L. J., M. C. 48; see now 17 & 18 Vict. c. 104, Appendix, "Shipping."

it not appearing that *Lambeth*, and *St. Mary, Lambeth*, were two distinct parishes (*l*).

And where the form prescribed by a statute (5 Geo. 4, c. 126, the General Turnpike Act), directed the penalty to be paid, one half to the informer and the other half to the "surveyor of the turnpike road where the said offence, &c. happened," and a warrant upon a conviction, under the act, directed one moiety to be paid to the informer, and the other moiety to the "treasurer of the commissioners for amending the roads and highways in the Isle of Wight, being the place where the said offence was committed," it was held sufficient, and *Tindal, C. J.*, said, "The form given by the 3 Geo. 3, c. 126, has in this respect, been followed as nearly as the exigencies of the case would permit; it was impossible, literally, to follow the form in the schedule, and any defect of form is cured by the 148th section" (*m*).

It may be noticed by the way, as an observation arising from another part of the above case of *R. v. Priest*, that it is not always sufficient to adhere literally to the form given by act of parliament, where, from the nature of the case, the general terms of the adjudication used in that form do not suffice to ascertain that which the express provisions of the statute require to be ascertained. The form annexed to the act there referred to (35 Geo. 3, c. 6, s. 68) has the words, "to be distributed as the law directs, according to the statute in that case made and provided;" but the statute itself expressly directs the magistrate to fix a sum to be given by way of satisfaction to the soldier aggrieved (sect. 85). It is clear, therefore, that a judgment, pursuant to the general form, could not be executed for want of ascertaining that sum; therefore, a departure from the form given by the statute, by using a more precise specification, was deemed not to be any objection; and indeed it is difficult to see how the conviction could

Statute-form  
not sufficient,  
in what cases.

(*l*) *R. v. Glossopp*, 4 B. & A. 616.

(*m*) *Barnes v. White*, 1 C. B. 192,  
210.

have been sustained, if it had merely adopted the general form, without ascertaining what part of the penalty should be given in satisfaction to the party grieved; for that is a matter entirely in the magistrate's discretion. Lord *Kenyon*, with reference to that point, said, "Where a form of conviction is prescribed by statute, it is in general most safe to adopt the very words used; but, taking the whole of this act together, the legislature could not intend that there should be a literal adherence to the form prescribed" (n).

Amount of  
injury.

The same rules will of course apply, where, instead of, or in addition to, a penalty, the defendant is to pay the amount of the injury he has occasioned. Thus, 24 & 25 Vict. c. 96, contains such a provision, and then, by s. 106, provides that every sum of money forfeited on summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value, or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice, whether in addition to such value or amount, or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person (see 11 & 12 Vict. c. 43, s. 31); provided that where several persons shall join in the commission of the same offence, and shall, on conviction, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, no further sum shall be paid to the party aggrieved than such value or amount, and the remaining sum or sums shall be applied in the same manner as any penalty imposed by a justice is hereinbefore directed to be applied.

And 24 & 25 Vict. c. 97 contains analogous provisions.

Under the statute which gives magistrates a summary jurisdiction in certain cases of larceny (18 & 19 Vict. c. 126), they are empowered to award compensation to the prosecutor and his witnesses, and also, in some instances, the restitution of property (*o*); and the 24 & 25 Vict. c. 96 (*p*) also contains provisions as to restitution. Restitution of property, &c.



### SECT. 6.—*Of awarding Costs.*

Till the statute 18 Geo. 3, c. 19, was passed, there was no general power enabling the convicting magistrate to award costs to either party, though such a provision had occasionally been inserted in particular acts. Power to award costs.

But by that statute (since repealed so far as it relates to this subject (*q*)) costs might be awarded to either party, and if the penalty amounted to 5*l.* the costs were to be deducted out of the penalty (*r*). Now, by stat. 11 & 12 Vict. c. 43, s. 18, it is enacted, that in all cases of summary convictions or of orders (except those within s. 35), the justices making the same may, in their discretion, award and order in and by such conviction or order that the defendant shall pay to the prosecutor such costs as to the justices seem just and reasonable. Also, where the information or complaint is dismissed, the prosecutor or complainant may be ordered by the order of dismissal to pay to the defendant such costs as to the justices seem just and reasonable; and the sums so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal. The costs are recoverable in the same manner, and under the same

(*o*) See sects. 8, 14, Appendix "Larceny," and *ante*, p. 154. As to restitution of property, see *Reg. v. The London Corporation*, 27 L. J., M. C. 231.

(*p*) Larceny Act.

(*q*) By 11 & 12 Vict. c. 43, s. 36.

(*r*) See *Wray v. Toke*, 12 Q. B. 492, 510; and *Skingley v. Surridge*, 11 M. & W. 503.

warrants, as any penalty or sum of money assessed to be paid in and by the conviction or order is recoverable; and in cases where there is no such penalty or sum then the costs are to be recoverable by distress, and in default of distress, by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless the costs shall be sooner paid (*s*). Provision is also made for recovering the costs of the distress, and of the commitment, and of conveying the party to prison. The sums so awarded must be ascertained in the warrant (*t*).

Costs at discretion of third person bad.

The justice, moreover, must himself ascertain the sum. An award "of such costs as to certain other persons (by name) shall seem reasonable" is bad, for an authority of this kind cannot be delegated (*u*).

We have seen that, by sect. 18 of 11 & 12 Vict. c. 43, the sum allowed for costs is to be specified in the conviction (*x*), and to be recoverable in the same way as any penalty adjudged to be paid by such conviction is recoverable.

But where corporeal punishment is substituted for the penalty, in the event of its non-payment, such punishment must not extend to the non-payment of the costs, because it is not the method by which the penalty is "recoverable" within the meaning of the above section. This was decided in *R. v. Barton* (*y*), which was the case of a conviction on the stat. 29 Car. 2, c. 7, ss. 1 and 2,

(*s*) Sect. 18. The form of the warrants will be found in the Appendix.

(*t*) Sects. 21—24, 26, 27, *post*, p. 300. The last-mentioned section refers to costs of appeal; see Appeal, and *R. v. Payne*, 4 D. & R. 72; see also 12 & 13 Vict. c. 14, for enabling overseers of the poor and surveyors of the highways to recover the costs of distraining for rates, and *Walsh v. Southworth and others*, 6 Exch. 150.

(*u*) *R. v. St. Mary's, Nottingham*, 13 East, 57, n.; *Selwood v. Mount*,

1 Q. B. 726; *Lock v. Selwood*, *Id.* 736; *R. v. Clark*, 5 *Id.* 887; *post*, "Appeal."

(*x*) Where the justices signed a conviction and warrant of commitment, leaving blanks for the amount of costs to be inserted, it was held to be an irregularity, but not an excess of jurisdiction rendering them liable to an action; *Bott v. Ackroyd*, 28 L. J., M. C. 207; see also *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1.

(*y*) 13 Q. B. 389; and see *Barton v. Bricknell*, *Id.* 393.



whereby a penalty of 5s. is imposed to be levied by distress, and in default of such distress, or in case of insufficiency or inability to pay the said penalty, the offender is to be set publicly in the stocks for two hours. The Court quashed the conviction, which adjudged the offender to forfeit and pay 5s., and 11s. costs, and that the said several sums, if not paid, should be levied by distress, and in default of sufficient distress, that the party convicted should be set publicly in the stocks for the space of two hours, unless the said several sums should be sooner paid(z). *Wightman, J.*, said, "The stocks is a personal punishment substituted for the pecuniary penalty where that cannot be levied: not a means provided for recovering the penalty" (a).

Where the justices have awarded costs to a party on an appeal against a conviction, in pursuance of the power given by an act of parliament which declares that they may be levied by distress, a mandamus lies, or a rule will be granted (b), to compel the justices to issue their warrant of distress (c).

### SECT. 7.—*Conclusion of the Conviction.*

The conviction concludes with an attestation under the hand and seal of the magistrate, which is the only proper mode of authenticating it as the record of his proceeding (d). Attestation.

(z) The magistrates would have been justified in ordering the defendant to be put in the stocks for two hours if the five shillings were not paid, and ordering a distress for the costs, because the penalty was recoverable by distress.

(a) As to the mode of awarding costs, see *Tarry v. Newman*, 15 M. & W. 645, 653, 655; *Wray v. Toke*, 12 Q. B. 492, 509; *Selwood v. Mount*, 1 Q. B. 726; *Lock v. Selwood*, *Id.* 736; *R. v. Long*, *Id.* 740; *R. v.*

*Mortlock*, 7 *Id.* 459; *R. v. Glamorgansh.*, 19 L. J., M. C. 172; *R. v. Merionethsh.*, 1 D. & Mer. 121; *R. v. JJ. Westmoreland*, 1 D. & L. 178; *Ex parte Holloway*, 1 Dowl. 26.

(b) 11 & 12 Vict. c. 44, s. 5.

(c) *R. v. JJ. Hants*, 1 B. & Adol. 654; see *Ex parte Thomas*, 16 L. J., M. C. 57; *post*, p. 298.

(d) *Ante*, p. 158. An order, having an impression made on it with ink by means of a wooden block, is sufficiently sealed; *R.*

Date.

Along with the attestation the date is usually affixed ; and it is material, where the time for conviction is limited by statute, that the date should bring it within that time, when compared with the date alleged for the offence :—

Thus, on a statute requiring the offence to be prosecuted within twelve months, a conviction, dated 13th *August*, 1708, for an offence committed 14th *August*, 1707, was deemed objectionable, though it contained an averment of the defendant “being duly prosecuted within twelve months after the offence :” for the justices, it was said, might construe twelve months to mean twelve calendar months, or a year, whereas by law it is twelve lunar months only (*e*). Now, however, the word “month” in all acts of parliament means a calendar month (*f*).

*v. St. Paul's, Covent Garden*, 7 Q. B. 232; 14 L. J., M. C. 109; and see *Re Morley*, 33 L. J., Prob. 108; *Jenkyns v. Garsford*, 32 L. J., Div. 122. Justices need not sign their christian names at full length to an order of removal; *R. v. Worthenbury*, 7 Q. B. 555; 14 L. J., M. C. 144. A verbal adjudication was made by justices in petty sessions, and a formal order was afterwards drawn up and signed by one justice on the 1st of March, and by the others on the 3rd; it was held to be valid; *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193. An

order altered by one of the justices in the presence of the other after signature, but before delivery, is not vitiated; *R. v. Llanwinio*, 4 T. R. 473; see *R. v. Winwick*, 8 Id. 454. As to alteration of a case after it has been stated and given to the prosecutor, see *Chandler's case*, 32 L. J., M. C. 66.

(*e*) Per Holt, C. J., *R. v. Peckham*, Comb. 439; see *R. v. Bellamy*, 2 D. & R. 727; 1 D. & R. Mag. Ca. 511; 1 B. & C. 509; and *ante*, p. 52.

(*f*) 13 & 14 Vict. c. 21, s. 4.

## PART III.

## PROCEEDINGS SUBSEQUENT TO THE CONVICTION.

## CHAPTER I.

1. <i>Of giving a Copy of the Conviction</i> .....	287	3. <i>Of returning the Conviction to the Sessions and filing the same</i> .....	293
2. <i>Of drawing up and amending Conviction and Orders</i> ....	288		

THE defendant is entitled, upon application, to a copy of his conviction from the convicting magistrate. Where a party was placed under the necessity of suing out a *certiorari*, merely for the purpose of obtaining a copy of a conviction, which was necessary for his defence to an action brought for the same fact, and which had been denied by the magistrate,—the latter was refused his costs, which he would otherwise have been entitled to, on the affirmance of the conviction. Upon that occasion it was said by Mr. Justice *Yates*, “The justice ought to have given the defendant a copy of the conviction; for it was a record, and the defendant was entitled to it” (a).

Defendant's  
right to copy  
of conviction.

If, however, by mistake, and without any fraud or intention to mislead, a copy be delivered to the party, misstating the name of the informer, or any other fact, and a more correct one be returned to the sessions, that Court can only take notice of the latter (b). And the defendant is not, it seems, entitled to have a copy of the

(a) *R. v. Midlam*, 3 Burr. 1720; and see *Taylor Evid.* (2nd edition), pp. 1161, 1162. So if a defendant be arrested on a warrant of commitment, he is entitled to a copy of it,

under the Habeas Corpus Act, 31 Car. 2, c. 2, s. 5.

(b) *R. v. Allen*, 15 East, 333, 346, *post*, p. 289.

conviction to enable him to appeal against it at the sessions for any matter of mere form, or to "pick holes in it," without regard to the merits (*c*).

Practice as to  
drawing up  
conviction.

By the statute 11 & 12 Vict. c. 43, s. 14, it is enacted, that if the defendant be convicted, or an order be made against him, a minute or memorandum shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the justice or justices in proper form, under their hands and seals, and they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the General Quarter Sessions. If the information or complaint be dismissed, the justices may, if they think fit, upon being required to do so, make an order of dismissal of the same, and give the defendant a certificate thereof, which certificate, afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters against the same party. Before an *order* of justices can be enforced by commitment or distress, a copy of the minute of it must be served on the defendant (*d*).

In point of fact, before this statute, the constant practice was, for the justices, at the time of their judgment,

(*c*) *R. v. JJ. Huntingdon*, 5 D. & R. 588; 2 D. & R. Mag. Ca. 594, *sed quære?*

(*d*) 11 & 12 Vict. c. 43, s. 17. A formal order need not be drawn up before the warrant issues; *Ratt v. Parkinson and others*, 20 L. J., M. C. 208, 210. An order is said to be made when it is pronounced verbally and before it is formally drawn up; *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193, 196; see also *Bott v. Ackroyd*, 28 L. J., M. C. 207. Under the statute 18 & 19 Vict. c. 126, giving justices at petty sessions power to adjudicate in certain cases of larceny, if the charge be dismissed, a certificate of such dismissal is to be delivered to the party

charged (s. 1); and the justices are to transmit the proceedings (whether a conviction ensue or not) to the next general or quarter sessions, there to be kept among the records of the Court, and a copy of the conviction, or of the certificate of dismissal, certified by the proper officer of the Court, or proved to be a true copy, will be sufficient evidence of such conviction or dismissal in any legal proceeding (s. 7); and every person who obtains a certificate of dismissal, or is convicted under the act, is released from all further or other criminal proceedings for the same cause (s. 12); see Appendix, "Larceny;" and see 24 & 25 Vict. c. 100, s. 44, as to certificate of dismissal on charge of assault.

merely to take minutes of the charge, examination and other proceedings, without attention to precise form, to serve as *memoranda* for drawing up a more formal statement, if they should be required to file the conviction at the sessions, or to return it to a writ of *certiorari*. Nor was there, provided the statement was warranted by the facts, any legal objection to this method, which the Court of Queen's Bench had been in the habit of recognizing(*e*). Indeed it is allowed, that the formal conviction may be drawn up at any time before it is acted upon(*f*), or before the return of the *certiorari*, although after a commitment(*g*), or after the penalty has been levied by distress(*h*), or after action brought against the magistrate(*i*), or, as it seems, even after the conviction has been returned to the sessions(*j*). And, as we have seen, even after the magistrate has delivered to the defendant a copy of the conviction, as that upon which the subsequent proceedings have been founded, he is not thereby precluded from drawing up and returning a conviction in a formal shape, which is to be taken as the only authentic record of the proceedings(*k*); for the conviction

Copy delivered  
not binding.

(*e*) Per *Ld. Kenyon*, 1 East, 188, 189; 10 Mod. 382; *R. v. JJ. Huntingdon*, 5 D. & R. 588; 2 D. & R. Mag. Ca. 594; *Chaney v. Payne*, 1 Q. B. 712. In that case (as in *Charter v. Greame*, 13 Q. B. 216) the conviction could not be quashed, nor brought before the Court directly by the defendant, as the *certiorari* was taken away, but the commitment, which recited the conviction, having been held bad at sessions, by reason of a defect in the conviction as recited, it was held too late for the magistrates to draw up a second amended conviction, and that the effect was the same as if the conviction itself had been quashed; see *post*, "Certiorari." A warrant of commitment must be drawn up in writing as soon as possible after the commitment is ordered, *Hutchinson v. Lowndes*, 4 B. & Ad. 118; see *Re Elmy and another*, 1 A. & E.

843; see as to substituting a good for a bad warrant of commitment in execution, *R. v. Richards*, 5 Q. B. 926; *Re Fell*, 15 L. J., M. C. 25; *R. v. Chaney*, 6 Dowl. 281, 289; *Lindsay v. Leigh*, 11 Q. B. 455; *Ex parte Cross*, 2 H. & N. 354; 26 L. J., M. C. 201; *Re Elmy*, 1 A. & E. 843; *Ex parte Smith*, 3 H. & N. 227; 27 L. J., M. C. 186; *R. v. Ternan*, 33 L. J., M. C. 201.

(*f*) Per *Erle, J.*, in *Bott v. Ackroyd*, 28 L. J., M. C. 208.

(*g*) *Massey v. Johnson*, 12 East, 82, *post*, "Commitment."

(*h*) *R. v. Barker*, 1 East, 186.

(*i*) *Lindsay v. Leigh*, 11 Q. B. 455; *Massey v. Johnson*, 12 East, 82; *Gray v. Cookson*, 16 East, 13.

(*j*) *R. v. Richards*, 5 Q. B. 926; *Selwood v. Mount*, 9 C. & P. 75; *Chaney v. Payne*, 1 Q. B. 723.

(*k*) See *Basten v. Carew*, 5 D. & R. 553; 2 Mag. Cas. 563; 3 B. &

returned to the sessions, or to the Court of Queen's Bench, is the only one of which those Courts respectively can take notice.

Thus, after a distress and warrant of commitment issued, the party having applied for a copy of the proceedings, a copy of the original minutes was furnished to him by the justice's clerk, and the justice afterwards drew up and returned to a *certiorari* another and more formal conviction, dated as of the day when the original proceedings were had,—the latter conviction was warranted by the facts, but was more regular, and in that respect differed from the copy furnished to the defendant, which was in some respects informal,—a criminal information was moved for against the justice, on the ground that, though magistrates ought to be indulged with a reasonable time for drawing up their convictions, yet, when issued by their authority to the parties, and acted upon by levying execution, they ought not to be altered; and it was urged, that the parties, by such alteration being permitted, were liable to be drawn into unnecessary expense, as in that very instance the defendant, having received from the magistrate a copy of a conviction which was clearly bad, had been induced to apply for a *certiorari* to relieve himself from it. The Court, however, not only refused to grant an information, but said, that if the magistrate had done no more than return the conviction in a more formal shape, instead of sending it up in the informal one in which it was first drawn, and supposing the facts warranted the return actually made, it was not only legal, but laudable in him to do as he had done; and he would have done wrong if he had acted otherwise (*l*). And, in answer to the argument of the defendant being drawn into the expense of litigating the conviction, the Court observed, that a mere informality in the manner of drawing up the conviction ought not to be the inducement for

C. 649; *R. v. JJ. Huntingdon*, *supra*;  
*R. v. Allen*, 15 East, 333, 346.

(*l*) *R. v. Barker*, 1 East, 188.

removing it into the Queen's Bench, but some substantial defect in the justice and legality of the proceeding before the magistrate (*m*).

Thus also in one case, where the copy delivered to the defendant contained a mistake in the name of the informer (*n*), and in another, where the warrant of commitment misstated the name of the person on whose oath the conviction was founded, it was held, that these errors might and ought to have been corrected in the conviction formally returned, and the Court would not allow the defendant to avail himself of the variance as any ground of objection (*o*).

In all these cases, however, it is understood, that the corrected statement must be conformable to the facts as they really took place. And as the Court gives credit to the magistrates for the truth of the facts recorded in the conviction, it will hold them punishable for making a false statement (*p*). The fresh conviction must also be drawn up before the former one has been quashed for informality (*q*), or the defendant has been discharged for such cause, even although the conviction may not have been removed or quashed (*r*).

But where the validity of the warrant of commitment reciting the conviction was questioned, and the prisoner was remanded, the justices were allowed to substitute a good conviction (*s*): so a conviction may be drawn up to

(*m*) In *R. v. Glossop*, Easter, 2 Geo. 4 (1821), where a *certiorari* was directed to justices to certify proceedings at sessions under their hands and seals, and the return omitted their *seals*, the Court gave leave to amend the return in that respect, and sent it back for that purpose; Mr. Dowling's MS.

(*n*) *R. v. Allen*, 15 East, 333.

(*o*) 12 East, 67; *post*, "Appeal."

(*p*) 15 East, 346; and by Lord C. J. Parker, *R. v. Simpson*, 10 Mod. 382,—“As we ought to credit the justices in the execution of that

power the law has entrusted them with, if the justices should make a false return, whereby the party as well as justice is abused, they may be punished.”

(*q*) *Chaney v. Payne*, 1 Q. B. 712; *R. v. Chaney*, 6 Dowl. 281; and see *Charter v. Greame*, 13 Q. B. 216.

(*r*) *Charter v. Greame*, *supra*; 11 & 12 Vict. c. 43, s. 14.

(*s*) *Charter v. Greame*, 13 Q. B. 216. The former one had not been returned to sessions, but that fact would not, it seems, affect the decision.

sustain a commitment valid in form, although the Court will not assume that there is a good conviction free from the objection in the commitment, nor will they direct the gaoler to substitute a formal for an informal warrant in his return to a writ of *habeas corpus*(*t*).

It should be observed that an *order* of justices could not, formerly, like a conviction, be returned to sessions in an amended form, but a power of amendment in such case seems to be given by 11 & 12 Vict. c. 43, s. 14(*u*). If two orders be made by mistake at the sitting of magistrates, it is competent for them at the time to declare which is the right one(*v*).

Amendment of  
convictions  
and orders.

By 12 & 13 Vict. c. 45, s. 7, after reciting that "in many cases, where justices of the peace are by law empowered to make orders or to give judgments(*w*), great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, or on removal by *certiorari* into the Court of Queen's Bench, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matter in question," it is enacted, "that, if upon the trial of any appeal to any Court of general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of *certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the Court that

(*t*) See further on this point, *Selwood v. Mount*, 1 Q. B. 726, 734; *Lock v. Selwood*, *Id.* 736; 9 C. & P. 75; *Re Fell*, 3 D. & L. 373; *Wilkins v. Hemsworth*, 7 A. & E. 807; *The Canadian Prisoners' case*, 9 *Id.* 731; see also *post*, "Commitment," and "Habeas Corpus." Where separate convictions had been drawn up against each of two persons upon a joint information, Mr. Justice Erle refused to order the justices to draw

up one joint conviction; *Re Clee and Osborne*, 1 B. C. C. 31; 21 L. J., M. C. 112.

(*u*) *R. v. JJ. Chesh.*, 5 B. & Ad. 439; see *Wilkins v. Wright*, 2 Cr. & Mees. 191; *R. v. JJ. Radnorsh.*, 9 Dowl. 90; *ante*, p. 160.

(*v*) *Wilkins v. Hemsworth*, 7 A. & E. 807.

(*w*) The word "judgments," it seems, will include convictions; see *post*, "Appeal."



sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed: provided always, that no objection on account of any such order or judgment brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such *certiorari*" (x).

The justice ought regularly, in every instance, but more particularly where any part of the penalty is given to the Queen, to return a record of his conviction to the sessions, whether the party appeals or not, or whether any appeal be given by the statute or not(y). This is required by 11 & 12 Vict. c. 43, s. 14, and is sometimes enforced by the acts themselves which impose the penalties(z). On a recent occasion the Court of Queen's Bench, while refusing a rule to the magistrate's clerk to return summary convictions (on the ground that he was a mere servant in the matter), expressed an opinion that the justices would be liable to have a rule granted against them, or even to an indictment, if they refused to return to the sessions a conviction made by them(a).

Conviction to be filed at sessions.

(x) See *post*, "Appeal and Certiorari." A like power is given to amend orders of removal (11 & 12 Vict. c. 31, s. 6) and lunatic orders (16 & 17 Vict. c. 97, s. 113).

(y) *R. v. Eaton*, 2 T. R. 285. The reason given by Mr. Justice Buller is, that the crown may not be deprived of its share of the forfeitures. Since the statute 3 Geo. 4, c. 46, *post*, p. 310, this reason is in some measure dispensed with; and see 4 Geo. 4, c. 37, *post*, 312.

(z) As by 6 & 7 Will. 3, c. 12, s. 7; 39 & 40 Geo. 3, c. 89, s. 22; 1 & 2 Will. 4, c. 32, s. 43; and 24 & 25 Vict. c. 96, s. 112. By the

former act of 42 Geo. 3, c. 107, to prevent the killing of deer, the second offence, after a prior conviction, was declared felony; and it was directed, that, in order to facilitate the proof of the first conviction, the justice should transmit the record of conviction, under his hand and seal, to the next quarter sessions, to be filed by the clerk of the peace; which record, or a true copy thereof, was declared to be evidence to prove the fact of the first conviction; see also 18 & 19 Vict. c. 126, s. 7.

(a) *Ex parte Hayward*, 3 B. & S. 546; 32 L. J., M. C. 89.

If the magistrate, after receiving due notice of appeal, neglects to return the conviction; whereby the party is prevented from prosecuting his appeal, he is liable, in an action on the case, for the special damage (*b*).

It will be observed that the 14th section of 11 & 12 Vict. c. 43, does not fix any time for the conviction to be returned and filed, and where a statute required it to be done at the "next Quarter Sessions," the words were held to be directory, not imperative, as to the time (*c*).

(*b*) *Proser v. Hyde*, 1 T. R. 414.

(*c*) *Charter v. Greame*, 13 Q. B. 216; *Mason v. Barker*, 1 C. & Kir. 100, 107; and see *ante*, p. 35, n. (*h*). The provision, however, in 26 Geo. 3, c. 14, which requires that a table of

fees shall be prepared at one sessions and approved at "the next succeeding quarter sessions" is imperative; *Bowman v. Blyth*, 7 E. & B. 26; 27 L. J., M. C. 21.

## CHAPTER II.

## OF THE PROCEEDINGS IN EXECUTION.

1. <i>Of the Recognizance</i> .....	295	3. <i>Disposal of and accounting for Fines</i> .....	309
2. <i>Of levying the Penalty by Distress</i> .....	297	4. <i>Commitment for Punishment or in Default of Distress or Payment</i> .....	315

SECT. 1.—*Of the Recognizance.*

THE proceedings ulterior to the conviction are either, on the side of the prosecution, in furtherance of the conviction, or, on behalf of the party convicted, for reversal or relief. The business of the present chapter will be to describe the several modes of enforcing the object of conviction, viz. by recognizance, distress and commitment, the last of which is either a primary punishment or only secondary to a pecuniary one.

The powers of the convicting magistrate are confined, in general, to enforcing the punishment (a) for the particular offence against which judgment has passed, the usual jurisdiction of the magistrate not enabling him to compel the offender to give security against a future breach of the law.

Recognizance  
against future  
offence.

Where a magistrate has power to require a party brought before him to enter into a recognizance to keep the peace, the Court of Queen's Bench will not interfere with his discretion in that respect (b).

Where a statute (the Night Poaching Act, 9 Geo. 4, c. 69, s. 1) empowered a magistrate to require sureties from the offender "for his not so offending again," and

(a) But (as we have seen, *ante*, p. 250) there are exceptions to this rule under 24 & 25 Vict. c. 96, s. 108, and 24 & 25 Vict. c. 97, s. 66.

(b) *R. v. Tregarthen*, 5 B. & Adol. 678; 2 Nev. & M. 379; see *R. v. Dunn*, 12 A. & E. 559.

the warrant adjudged him to find sureties that he would "not offend again" generally, it was held to be bad (c). And where a Court of Quarter Sessions made an order that the defendants should enter into recognizances before a magistrate to keep the peace, but did not direct that in default of finding sureties they should be committed, and on the defendants declining to enter into recognizances the magistrate committed them, it was held that he had no jurisdiction to do so (d).

Commitment  
or security  
until return of  
distress-war-  
rant.

Whenever a distress-warrant is issued, the justice may order the defendant to be detained in custody until return is made to the warrant, unless the defendant gives sufficient security by recognizance or otherwise for his appearance at the time and place appointed for the return (e).

(c) *Re Reynolds and another*, 1 D. & L. 846; 13 L. J., M. C. 65. Another objection taken to the warrant was, that it required two defendants to find sureties, not only each for his own conduct, but also for the conduct of the other; but there was no decision on this point; see *Cureton v. The Queen*, El. B. & S. 208; 30 L. J., M. C. 149, 152. See, as to sureties to keep the peace, *Ex parte Aston*, 12 M. & W. 456; *Prickett v. Gratrex*, 8 Q. B. 1020; *R. v. JJ. Huntingdonsh.*, 14 L. J., M. C. 99; *R. v. Deny and others*, 20 L. J., M. C. 189. In the last cited case, it was held that, on an application for sureties to keep the peace, magistrates have no jurisdiction to deal summarily with the

case as for a common assault. As to estreat of recognizances, *post*, p. 311.

(d) *Re Ashton*, 7 Q. B. 169.

(e) 11 & 12 Vict. c. 43, s. 20. A magistrate has power to require sureties for good behaviour from a person charged before him with having published a libel calculated to produce a breach of the peace, and in default of such sureties to commit the party so charged to prison; *Haylock v. Sparke*, 1 El. & Bl. 471. *R. v. Cossins, Parker*, 54, and *R. v. JJ. West Riding, Yorksh.*, 7 A. & E., 583. As to estreating recognizances for the payment of costs, see *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1. See *R. v. Downey*, 7 Q. B. 281.

SECT. 2.—Of levying the Penalty by Distress (f).

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5. Oath, &c. for Levy	id.	14. Default of Distress within Jurisdiction	304
6. Form of Warrant	300	15. Detaining Defendant	305
7. Jurisdiction must appear	id.	16. Commitment of Defendant	id.
8. By whom issued	301	17. Payment, &c. of Penalty	306
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10. By whom executed	id.	19. Distress replevisable	id.
11. Protection of Officer	302	20. Sale of Distress	308
		21. Return of Warrant	id.
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The mode of enforcing the payment of pecuniary fines is usually by distress or imprisonment. The power of proceeding by these compulsory methods is derived entirely from special statutory provisions, and is not any necessary consequence of a conviction. If a statute conferred only a power to convict, without making provision for the recovery of the penalty, there seems to have been no compulsory means of carrying such a law into effect (g). But now by 11 & 12 Vict. c. 43, ss. 19 and 21, where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and, by the statute authorizing such conviction or order, the penalty, compensation or sum of money is to be levied by distress, and also in cases where by the statute in that behalf no mode of raising or levying the penalty, &c., or of enforcing the payment of the same, is stated or provided, the penalty may be enforced by distress, or in default of distress by imprisonment.

Distress.

Power derived from statute.

It is usual, however, for the statutes inflicting penalties

(f) See *post*, p. 315. Many of the decisions relating to warrants of commitment are applicable to warrants of distress.

(g) This seems to be taken for granted in the preamble to the statute 15 Geo. 3, c. 14, which, reciting

that by a former act, 14 Geo. 3, c. 44, certain penalties had been inflicted, *but no provision made for the recovery of them*, gives a power to recover the same by distress and sale or imprisonment.

to contain an express authority for the purpose of enforcing them. It is sometimes directed to be exercised *immediately* upon non-payment of the penalty, in other cases only upon failure of payment after a certain number of days (*h*).

Demand and other proceedings before issuing warrant.

When the justice is empowered to issue his warrant, on refusal or neglect of payment for a certain number of days, it seems to be understood that no *demand* is necessary to enable him to do so after the expiration of that time (*i*). So, if the defendant is rendered liable to a distress, if the penalty is not *forthwith* paid on conviction, no demand is necessary before the issuing of the warrant (*j*). By 11 & 12 Vict. c. 43, s. 17, in all cases where by any act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any *order* of justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress. It is not necessary that a formal order should be drawn up before a warrant of distress issues (*k*).

Compelling justices to issue warrant.

And we have already seen (*l*), that where a statute has awarded costs to a party on a conviction before a magistrate, and declared that they may be levied by distress, the justice is compellable by mandamus or by rule to issue his warrant of distress if default be made in payment of

(*h*) In the absence of express provision for the purpose, justices have no power to postpone the payment of the penalty; *Parker v. Boughy*, 3 B. & S. 43; 31 L. J., M. C. 272.

(*i*) *Wootton v. Harvey*, 6 East, 75. See *R. v. Ford*, 2 A. & E. 588; *Gibbs v. Stead*, 8 B. & C. 528; *Style*, 13; 11 & 12 Vict. c. 43, s. 23.

(*j*) *Barnes v. White*, 1 C. B. 192, 205, 210; *Arnold v. Dimsdale*, 2 El. & Bl. 580; *Ely v. Moule*, 5 Exch. 918; see *ante*, p. 20, n. (*k*);

and *post*, "Commitment." In cases where the distress is for a mere rate or assessment, there should in general be a summons and hearing before a warrant is issued; see *R. v. Benn*, 6 T. R. 198; *R. v. JJ. Stafford*, 3 A. & E. 425; and *Painter v. The Liverpool Gas Company*, *Id.* 433. So before proceeding under the Nuisances Removal Act, *R. v. Jenkins*, 3 B. & S. 116; 32 L. J., M. C. 1.

(*k*) *Ratt v. Parkinson and others*, 20 L. J., M. C. 210; *ante*, p. 289.

(*l*) *Ante*, p. 285; *R. v. JJ. Hants*, 1 B. & Adol. 654.

the costs. But where the justices had reasonable ground for doubting their jurisdiction in this respect, the Court would not compel them to do an act which might subject them to an action (*m*). Now, however, they are not responsible for obeying the rule (*n*) or mandamus (*o*).

Those statutes, which give a power of appeal to the party convicted, frequently also provide, that, upon the appeal, and security given for prosecuting it, the distress shall be stayed till the determination of the appeal. In such cases, after the appeal is decided, if the time limited for making the distress has expired, the magistrate may issue his warrant immediately, without demand, for the time runs from the order (*p*). By 11 & 12 Vict. c. 43, s. 27, if a conviction or order is affirmed on appeal, the justices who made the conviction or order, or other justices of the same county, &c., may issue a warrant of distress or commitment as if no appeal had been brought. But, if the warrant has been issued before, and suspended by the appeal, it is better, after the decision of the appeal, to apply to the magistrate and state the facts to him before proceeding to the execution of the warrant (*q*).

Wherever it is necessary to administer an oath or affirmation of levying any penalty, or making distress in execution

Suspended by appeal.

Oath, &c. for levy.

(*m*) *R. v. JJ. Bucks*, 1 B. & C. 485; 2 D. & R. 689; 1 D. & R. Mag. Ca. 369; and see further, as to compelling magistrates to issue a distress warrant, *R. v. Newcombe*, 4 T. R. 368; *R. v. JJ. Stafford*, 3 A. & E. 425; *Painter v. The Liverpool Gas Company*, *Id.* 433; *R. v. Hughes*, *Id.* 425; *R. v. Deverell*, 3 El. & Bl. 372; *R. v. Pilkington*, 2 *Id.* 546; *Ex parte Hughes*, 18 Jur. 447; 23 L. J., M. C. 138; *Ex parte Williams*, 17 Jur. 763; *R. v. Collins*, 16 *Id.* 422; *R. v. Overseers of Kingstonsford*, 3 El. & Bl. 689; 23 L. J., Q. B. 337; *Ex parte Grimes*, 22 L. J., M. C. 153; *Re Hartley*, 31 *Id.* 232; *R. v. JJ. Kingston*, El. Bl. & El. 256; 27 L. J., M. C. 199, 201;

*R. v. Parker*, 7 El. & Bl. 155; 26 L. J., M. C. 199; *R. v. Boteler*, 33 *Id.* 101; Index, "Ministerial."

(*n*) 11 & 12 Vict. c. 44, s. 5.

(*o*) 6 & 7 Vict. c. 67, s. 3.

(*p*) *Wootton v. Harvey*, 6 East, 75; and see *Atkins v. Kilby*, 11 A. & E. 777; *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J. (N. S.) M. C. 89, S. C.; *post*, "Appeal."

(*q*) Per Lawrence, J., 6 East, 79. It seems doubtful whether (except as stated in the text) justices can revoke or suspend the execution of a warrant after it has once been issued, at all events unless it is a nullity; *Barons v. Luscombe*, 3 A. & E. 589; see *Atkins v. Kilby*, *Kendall v. Wilkinson*, *supra*.

of a conviction, a general power is given for that purpose (by 15 Geo. 3, c. 39) to any justice acting under the statute which authorizes the levy.

Warrant of  
distress.

The proper mode of proceeding is, for the justice, either forthwith, if immediate payment be enjoined by the statute, or, otherwise, at the expiration of the limited time, to make a warrant (*r*) in writing under his hand and seal (*s*), directed to the constable or other proper officer of the parish or district in which the goods to be distrained upon are found. The warrant recites the conviction and adjudication; it then states the non-payment of the penalty and costs (*t*), and commands the officer to levy the sums specified. It was held to be no objection to a warrant of distress that, after setting out the conviction, it ordered the money levied to be paid to the justices, in order that they might dispose of the same as directed by the conviction (*u*).

Form of.

The form of warrant is given in the schedule to 11 & 12 Vict. c. 43, and should be followed in all cases within the act (*v*). A warrant of distress, founded upon and reciting a defective order or conviction, is bad (*w*). It should be warranted by the conviction (*x*), and all those facts must appear upon the face of it which are necessary to give jurisdiction to the justices over the subject-matter (*y*).

Jurisdiction  
must appear.

And where a warrant of distress against an overseer, for not paying over his balance in hand, did not distinctly set

(*r*) See 12 & 13 Vict. c. 43, and Schedule.

(*s*) See *post*, p. 319; also *Jones v. Johnson and another*, 5 Exch. 862; *S. C. in error*, 7 Exch. 452, as to signature of a warrant of distress by the mayor of a borough, and the attaching the corporate seal, under 7 Will. 4 & 1 Vict. c. 81.

(*t*) See the form, Appendix, tit. "Distress."

(*u*) *Wray v. Toke*, 12 Q. B. 492.

(*v*) See *Re Geswood*, 2 El. & Bl. 952; *Re Bailey*, 3 Id. 607; *Re Hyde*,

16 Jur. 337; 21 L. J., M. C. 94, S. C.; and *Re Allison*, 10 Exch. 561; 24 L. J., M. C. 73, S. C.

(*w*) *Day v. King*, 5 A. & E. 359.

(*x*) *R. v. Wyatt*, 2 Lord Raym. 1189; *Rogers v. Jones*, 3 B. & C. 409; *Daniel v. Phillips*, 5 Tyr. 293; *post*, "Commitment."

(*y*) *Day v. King*, 5 A. & E. 359; *Johnson v. Reid*, 6 M. & W. 124; *Re Peerless*, 1 Q. B. 143; 2 Burn's Justice, tit. "Distress," pp. 32, 33; 6 Id. tit. "Commitment," p. 789.



out the summons, the hearing before the magistrate (*z*), and the refusal to pay, it was held to be bad; and the magistrate who signed it, and the officers who executed it, were held to be liable for the amount of the sum levied in an action of trespass (*y*).

In general, the warrant should have appointed a time and place for returning it (*z*), but this is no longer necessary (*a*). It is, therefore, returnable when executed (*b*). Return of.

The warrant may be issued by the justice or justices who made the conviction, or by any justice of the same county or place (*c*). It may be issued by one justice, although the conviction may have been required to be made by two justices (*d*). By whom issued.

The warrant is directed thus:—"To the constable of —, and to all other peace officers in the said county of —."

The constable is the proper officer to execute the warrant (*e*). And if it be delivered to him a reasonable time before the day (if any) appointed for the return he is bound to execute and return it, and is indictable for refusal or wilful neglect (*f*). For constables, who at common law were originally subordinate officers to the conservators of the peace, are now the proper officers of the justices of the peace, who have succeeded to that capacity (*g*). To whom directed.

If the warrant be directed to *all constables generally*, the law is, that no one in particular can execute it out of his By whom executed.

(*x*) These facts no longer appear on the conviction or warrant.

(*y*) *Harris v. Stuart*, 7 C. & P. 779.

(*z*) *R. v. Wyatt*, Fort. 127; 2 Ld. Raym. 1189; 1 Salk. 380.

(*a*) See form in Appendix. The 20th and 21st sections of 11 & 12 Vict. c. 43, seem to assume that a time and place will be appointed for the return of the warrant of distress.

(*b*) *Post*, p. 308.

(*c*) 11 & 12 Vict. c. 43, s. 19.

(*d*) *Id.* s. 29.

(*e*) It was said in argument,

Carth. 78, and appears to have been assented to by the Court, that a justice of the peace cannot direct his warrant to his servant, or to any other person but to the constable, or parish officer. This must, however, be understood to include the known officers in boroughs or other special jurisdictions; see 1 Burn's Justice, tit. "Constable," p. 908, 29th edit.

(*f*) *R. v. Wyatt*, Fort. 127; see 2 Ld. Raym. 1189; 2 Roll. Rep. 78; Hawk. P. C. 2, c. 16, s. 5.

(*g*) Fort. 129.

own district (unless it has been duly endorsed), it being directed to him only by his name of office, and no one having authority, *eo nomine*, out of his district. But if the warrant is directed to a particular constable by name, *he* then may execute it any where within the jurisdiction of the magistrate (*h*). If it be directed to more than one person in several or disjunctive terms, it may be executed by any one, but if to two or more jointly, it seems that they all must execute it. When the party named in the warrant employs others to assist him, he should be so near as to be acting in the execution of the warrant at the time of its execution (*i*). The warrant may be executed at any time while it is in force, that is, until it is fully executed, provided that the justices issuing it so long live (*i*). By the stat. 11 & 12 Vict. c. 43, s. 19, if sufficient distress is not found within the jurisdiction of the justice granting the warrant, it may be backed by any justice of any other county or place, and may then be executed by the person bringing the warrant or the person or persons to whom it was originally directed, or by any constable or peace officer of such last-mentioned county or place (*k*).

Protection of  
officer.

The constable was not protected by the warrant, though valid on the face of it, if the justices had no jurisdiction to issue it; but if they had jurisdiction and acted *inverso ordine* or irregularly, the constable would then be protected (*l*). But now in either event provisions are made

(*h*) Carth. 508; Salk. 176; Hawk. P. C. b. 2, c. 13, s. 30; *R. v. Weir*, 1 B. & C. 288; 2 D. & R. 444; 1 D. & R. Mag. Ca. 319.

(*i*) 6 Burn's Justice, 363.

(*k*) See *ante*, p. 24, as to backing warrants. An overseer of a township may execute by deputy a warrant directed to him to levy a rate, such an act being purely of a ministerial character; *Walsh v. Southworth and others*, 6 Exch. 150. See, as to constables appointing a deputy in cases of necessity, Bac. Ab.

"Offices and Officers," L.; 1 Rol. Ab. 591, tit. "Deputie;" and *ante*, p. 57.

(*l*) *Morrell v. Martin*, 4 Scott, N. R. 300; 6 Bing. N. C. 373; *Painter v. The Liverpool Gas Company*, 3 A. & E. 435; and see *R. v. Davis*, 1 L. & C. C. C. 64; 30 L. J., M. C. 159. It is doubtful whether a sale under a void warrant passes any property in the goods, even to a *bond fide* purchaser; *Lock v. Selwood*, 1 Q. B. 736; 1 G. & D. 366, S. C.; see also *Farrant v. Thompson*, 3

for the protection of the officer by stat. 24 Geo. 2, c. 44, which will be fully considered in a subsequent Chapter (*m*).

By the statute 27 Geo. 2, c. 20, s. 2 (since repealed by 11 & 12 Vict. c. 43, s. 36), the officer, upon the execution of the warrant, was bound, if required, to show the warrant to the person whose goods were distrained, and to suffer a copy of it to be taken (*n*). How executed.  
Showing warrant.

It is laid down by Mr. Serjeant *Hawkins* (*o*), that, upon the warrant of a justice for levying a forfeiture, where the whole or any part thereof belongs to the Queen, the officer is justified in breaking open outer doors for the execution of the warrant; but there seems to be no such power by law in other cases, where no part of the penalty is vested in the crown. The constable distraining has no power to impound the goods on the premises, and ought not to remain longer than a reasonable time for the purpose of removing them (*p*). Breaking open outer doors.

If the offender be a *feme covert* (who is subject to this Offender a *feme covert*.

Stark. N. P. C. 130; 5 B. & Ald. 826; *Jeanes v. Wilkins*, 1 Ves. 194; *Anon.*, Dyer, 363a; *Eyre v. Woodfine*, Cro. Eliz. 278.

(*m*) *Post*, "Actions against Constables."

(*n*) See *Atkins v. Kilby*, 11 A. & E. 777. As to payment or tender of amount, see *post*, p. 306.

(*o*) B. 2, c. 14, s. 5, cites 2 Jones, 233, 234; *Ryan v. Shilcock*, 7 Exch. 72; and quære, whether, when the outer door is broken open, the distress is void? *Ibid.* p. 74; 1 Smith's Leading Cases, p. 46; Notes to *Semayne's case*. The presence of a constable is necessary before the collector of taxes can break open the outer door of a house in order to execute a warrant for arrears of land tax under 38 Geo. 3, c. 5, s. 17; *Foss v. Racine and others*, 4 M. & W. 419; see 2 Burn's Justice, "Distress," p. 324.

Where a statute, as the 22 & 23

Car. 2, c. 25, s. 2, empowered gamekeepers and other persons, authorized by warrant under the hand and seal of any justice of the peace for the county, in the day-time, to search the house of unqualified persons, suspected of having in their custody guns, &c. for the purpose of destroying game, and to seize, detain and keep the same, to and for the use of the lord of the manor, or to cut to pieces and destroy them,—it was held, in an action of trespass against constables, that this act did not justify the breaking the house to make search, without a previous request and refusal to open it; *Lau-nock v. Brown*, 2 B. & A. 592; see also on this point, 1 Smith's L. C. p. 46; *Theobald v. Critchinore*, 1 B. & A. 227; *Parton v. Williams*, 3 Id. 330.

(*p*) *Peppercorn v. Hofman*, 9 M. & W. 618.

species of conviction (*q*)), and the act of parliament authorize the recovery of the penalty by distress and sale of the offender's goods, the goods of the husband are not liable to be distrained for the penalty (*r*). But in the statute 22 Car. 2, c. 1 (*s*), against seditious conventicles, was inserted a special provision, "that, if the person offending be a *feme covert*, cohabiting with her husband, the penalties incurred by the act should be levied, by warrant as aforesaid, upon the goods and chattels of the husband (*t*).

Default of distress within jurisdiction.

If the offender was not possessed of sufficient goods to answer the penalty within the jurisdiction of the convicting justice, there was formerly no means of prosecuting the levy upon any effects elsewhere; but now, as we have seen, by the statute 11 & 12 Vict. c. 43, s. 19, it is enacted, that in all cases where any penalty, &c. shall be directed to be levied by warrant of any justice, by distress and sale of the goods of any person, if sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then upon proof alone being made on oath of the handwriting of the justice granting such warrant, before any justice of any other county, &c., such justice of such other county shall thereupon make an indorsement on such warrant, signed with his hand, authorizing the execution within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty, &c. may be levied by the person bringing such warrant, or by the person or persons to

(*q*) *Ante*, p. 71.

(*r*) 11 Co. 61 b; see also *R. v. Johnson*, 5 Q. B. 335.

(*s*) This statute was repealed by 52 Geo. 3, c. 155.

(*t*) See also 7 Jac. 1, c. 6, s. 28, which enacted, that if any married woman, being lawfully convicted of recusancy, should not conform within three months, she might be committed till conformity, unless her

husband should pay the penalty of 10*l.* a month.

In 1 Hawk. P. C. c. 1, s. 13, it is laid down, that if a wife incur the forfeiture of a penal statute, the husband may be made a party to an *action* or *information* for the same (as he may be generally to any suit, for a cause of action given by his wife), and shall be liable to answer what shall be recovered thereon.

whom it was originally directed, or by any constable or peace officer of such last-mentioned county, &c., by distress and sale of the goods of the defendant in such other county or place.

And whenever a warrant of distress is issued for the purpose of levying a penalty, or a sum of money (*u*) ordered to be paid, the justice granting the same may suffer the defendant to go at large, or verbally, or by a written warrant, may order the defendant to be detained in custody until return shall be made to the warrant of distress, unless the defendant shall give security for his appearance at the return of the warrant (*v*), or, in case it shall appear that the issuing of the warrant of distress will be ruinous to the defendant and his family, or by the confession of the offender, or otherwise, that he hath no goods or chattels whereon to levy such distress, the justice may, at his discretion, without issuing any warrant of distress, commit the defendant to the house of correction for such period, and in like manner, as if a warrant of distress had been issued and *nulla bona* returned (*w*).

Detaining defendant.

Commitment of defendant.

Whenever penalties are directed to be recovered by distress, but no remedy is provided where no sufficient distress can be found, or no remedy is provided where it is returned that no sufficient goods can be found, the justice to whom such return is made, or any other justice for the same county, &c., may, if he think fit, by his warrant, commit the defendant for any term not ex-

(*u*) These words are larger than those of 5 Geo. 4, c. 18, s. 1 (now repealed), which was held to apply only to the recovery of penalties or forfeitures before justices, and not to debts, *e.g.* wages due to a servant; see *Wiles v. Cooper*, 3 A. & E. 524.

(*v*) 11 & 12 Vict. c. 43, s. 20. The section then prescribes the course to be adopted for the purpose

of enforcing the recognizance if the defendant does not appear.

(*w*) 11 & 12 Vict. c. 43, s. 19. A similar provision was contained in s. 4 of 5 Geo. 4, c. 18, only the consent of the party in writing was required before he could be committed on the ground that the issuing of the warrant of distress would be ruinous.

ceeding three calendar months, unless the sum adjudged to be paid, and all costs of the distress, and of the commitment and conveying of the defendant to prison (*x*), (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid (*y*). If imprisonment be imposed by statute in failure of sufficient distress, and the defendant has not sufficient to satisfy the amount, the goods ought not to be taken, but the corporeal punishment should be at once resorted to. It is otherwise, however, if there be two penalties, and the goods are sufficient to satisfy only one (*z*).

Payment, &c.  
of penalty.

If the party against whom a warrant of distress issues pay or tender to the constable having the execution of it the sum mentioned in the warrant, together with the expenses of the distress, the constable should cease to execute the warrant. If the party be imprisoned, he may pay to the keeper of the prison the amount of the penalty and costs, and he is then forthwith to be discharged, if he be in custody for no other matter (*a*).

Levying for  
costs.

Except where special provision was made for levying the costs and charges no more than the bare penalty could in any case be levied, until the statute 18 Geo. 3, c. 19, before mentioned (*b*), which first authorized the justice to give costs: that is now repealed, but a similar power is conferred, as we have seen, by 11 & 12 Vict. c. 43, s. 18 (*c*). Also by sect. 26 of the last-mentioned act, the costs of dismissal of an information or complaint, when costs are given, may be levied by distress, and in default of distress or payment, the prosecutor or complainant may be committed for any time not exceeding one calendar month.

Distress reple-  
visable.

As to the right of replevying goods taken for a penalty, the result of the modern authorities seems to be, that they

(*x*) The words "if such justice shall think fit so to order" do not occur in this section, although they are inserted in ss. 21, 23, 24 and 27. These words are again omitted in sect. 26 of the 11 & 12 Vict. c. 43.

(*y*) 11 & 12 Vict. c. 43, s. 22.

(*z*) *Post*, p. 318.

(*a*) 11 & 12 Vict. c. 43, s. 28; and see s. 31.

(*b*) See *ante*, p. 283.

(*c*) *Ante*, p. 283.

are replevisable. Lord Chief Baron *Gilbert* (*d*) had delivered an opinion, that if any inferior jurisdiction issued execution, a replevin was lawful, and the reason assigned was because the inferior jurisdiction being restrained within particular limits, the officer was obliged to show that he took the goods within those limits. A different opinion, however, seems to have subsequently prevailed, and attachments were granted for replevying goods taken under a conviction for a penalty (*e*). But after a full consideration of these cases, the Court of Exchequer decided, in *George v. Chambers* (*f*), that replevin would lie for taking goods under a warrant of distress upon an order of justices requiring the surveyor of a turnpike road to repair it and to pay a certain sum as costs. Lord *Abinger*, C. B., there said, "It is unnecessary to decide whether replevin will lie if goods are taken under a conviction, which is valid; it is enough for us to decide, that if the magistrate has not jurisdiction, either replevin or trespass will lie." Mr. Baron *Parke* said, "The question now to be decided is simply whether goods taken under a *pretended* authority can be replevied. *Primâ facie* there is no doubt they can, for though in ordinary practice it is applied only to a distress for rent, yet a replevin is at Common Law a remedy applicable in all cases where goods are improperly taken. And I find no satisfactory authority to show that it will not lie where goods are improperly taken under the warrant of a justice. In some cases, no doubt, the Court will interfere to prevent a replevin to save its process from being defeated. The Rule is correctly stated in Chief Baron *Gilbert's* Treatise on Replevin, p. 138. . . . Chief Baron *Gilbert* also says, "That in cases in which there is

(*d*) *Gilbert's* Replevin, 161, citing *Aylesbury v. Harvey*, 3 Lev. 204.

(*e*) See *Bradshaw's case*, 6 Bac. Ab. tit. "Replevin" (O); *R. v. Burchett*, 1 Str. 567; *R. v. Sheriff of Leicestersh.*, Barnard. 110; *R. v. Monkhouse*, 2 Str. 1184. See *Pear-*

*son v. Roberts*, Willes, 668, 673, n. (subject to the observations of Mr. Justice Blackburn, in *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 61); and *Pritchard v. Stephens*, 6 T. R. 522.

(*f*) 11 M. & W. 149.

no jurisdiction, the goods may be replevied." Mr. Baron *Alderson* said, "It is true replevin will not lie where there is a judgment of a superior Court, for if you replevied on the first judgment, you could do so on the judgment upon that also, and so there would be replevin on replevin *ad infinitum*. It is different in the case of an inferior jurisdiction, where it is to be set right by the superior" (*g*).

**Sale of distress.** It is fully settled, that by the words in an act of parliament authorizing the penalty, "to be levied by distress," is to be understood distress and *sale* (*h*).

The officer who sells ought to sell for ready money; and if he sells upon credit, he is immediately responsible for the same (*i*).

The warrant ought to set a time for the sale; and the period, except it be fixed by the act which imposes the penalty, was required by the 27 Geo. 2, c. 20 (since repealed by 11 & 12 Vict. c. 43, s. 36), to be within not less than four, nor more than eight, days (*j*).

**Return of warrant.**

The constable was bound, at the time assigned for the return of the warrant, to certify to the justice what he

(*g*) See also *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58, in which it was held that replevin would lie in the case of goods taken under a warrant of distress issued to enforce payment of costs ordered on appeal against a poor-rate, and *Jones v. Johnson and another*, 5 Exch. 862, 875, where it was held that replevin was maintainable against a magistrate for improperly issuing a warrant under which the plaintiff's goods had been distrained; *S. C. in error*, 7 Exch. 452. In Bul. N. P. 52, it is said, "replevin may be brought in any case, where a man has had his goods taken from him by another;" see also Com. Dig. Replevin; *Allen v. Sharp*, 2 Exch. 352; *Morrell v. Martin*, 3 M. & G. 581; *Shannon v. Shannon*, 1 Sch. & Lef. 327; *Attorney-General v. Brown*, 1 Swanst. 265; *Morell v. Harvey*, 4 A. & E. 684; *Fenton v. Boyle*, 2 N. R. 399; 2

*Burn's Justice*, tit. "Distress," p. 330.

(*h*) *R. v. Speed*, 1 Salk. 379; 12 Mod. 329; *Carth.* 502; *R. v. Nash*, 2 Ld. Ray. 990; *Morley v. Stocker*, 6 Mod. 83; *Anon.*, Sir T. Jones, 25.

(*i*) *Semble*, *Morley v. Stocker*, 6 Mod. 83.

(*j*) In *Jones v. Johnson and another*, 5 Exch. 862, 876; *S. C. in error*, 7 Exch. 452, it was held sufficient to allow five days before the sale, no time being fixed by the statute on which the warrant was founded, and Mr. Baron Parke said, "if the warrant had directed the sale to take place 'forthwith,' it would be bad, as it would not then give the party distrained upon sufficient time to turn about him and to procure the means of payment;" see also *R. v. Williams*, 19 L. J., M. C. 126; and *Painter v. The Liverpool Gas Company*, 3 A. & E. 447.



had done upon it (*k*), but no time is now limited for its return. He should, therefore, make his return within a reasonable time after its execution.

He is not, indeed, bound to return the warrant itself, which may be necessary for his own justification (*l*); and therefore it is a prudent precaution in the prosecutor to retain a duplicate of the warrant delivered to the constable, that it may be evidence if required. If the constable refuse to certify what he has done, or if he has levied the penalty and refuse to pay it over, he may be proceeded against by indictment or information; or, it seems, the justices, before whom the warrant was returnable, might fine him. One or other of these is the proper remedy for the prosecutor to resort to, if the requisite duty is not fulfilled; but the Court of Queen's Bench will not grant a *mandamus* to a constable to return the warrant, on a conviction removed into that Court by *certiorari* (*m*).

Constable refusing to return.

### SECT. 3.—*Of the Disposition of, and Manner of accounting for, Fines.*

All fines for offences created by any penal statute would, if not otherwise appropriated by the statutes themselves, belong to the crown (*n*). Disposal of fines.

Sundry acts have been passed to regulate the mode of accounting for and paying such fines as arise upon summary convictions before justices.

The matter, so far as relates to convictions in the metropolis, is regulated by the acts of 10 Geo. 4, c. 44, and 2 & 3 Vict. c. 71, and 24 & 25 Vict. c. 124, by which Under Metropolitan Police Acts.

(*k*) *R. v. Wyat*, 1 Salk. 380; 990; *Morley v. Stocker*, 6 Mod. 83, which is the same case under a different title.

(*l*) 2 Lord Raym. 1196.

(*n*) Hawk. P. C. b. 2. c. 26, s. 17;

(*m*) *R. v. Nash*, 2 Lord Raym. *R. v. Malland*, 2 Str. 828.

a receiver is appointed, and books ordered to be kept for the accounts, and certain remedies pointed out, in case of neglect in obeying those regulations.

Under Muni-  
cipal Corpora-  
tion Act.

By 5 & 6 Will. 4, c. 76, s. 92 (the Municipal Corporation Act), every fine or penalty for any offence against that Act (the application of which is not otherwise provided for) is to be paid to the treasurer of the borough, and to be carried by him to the account of the borough fund(o).

Levying fines,  
&c.  
General regu-  
lations.  
3 Geo. 4, c. 46.

For all the penalties due to the crown, concerning the payment of which there is no special statutory direction, the statute 3 Geo. 4, c. 46, s. 2 (p), provides a general regulation, by enacting that all such fines which shall be imposed by any justice or justices of the peace shall be certified by him or them to the clerk of the peace of the county, or town-clerk of the city, borough or place, in writing, containing the names and residences, trade, profession or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough or place respectively; and such clerk of the peace or town clerk shall (q) copy on a roll such fines, &c., and shall within such time as shall be fixed and determined by such Court, not exceeding twenty-one days after the adjournment of such court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule to the act, to the sheriff(r) of such county, or

(o) See also 13 & 14 Vict. c. 87.

(p) Since this statute (amended by 4 Geo. 4, c. 37; *post*, p. 312) the Court of Exchequer has no power to deal with such estreats; *R. v. Thompson*, 3 Tyr. 53; see 3 Burn's Justice, tit. "Fines," p. 37. At what sessions the recognizances may be forfeited, see *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1.

(q) His duty is imperative; *R.*

*v. JJ. Yorksh.*, 7 A. & E. 591; *ante*, p. 35, n. (h).

(r) This duty of the sheriff is not simply ministerial, nor is he justified in levying a fine, stated in the roll to be unpaid, when the amount has been paid to the sheriff himself before receiving the roll; *Wildes v. Morris*, 22 L. J., M. C. 4; *ante*, p. 20, n. (k).

the sheriff, bailiff or officer of such city, borough or place having execution of process therein respectively, as the case may be, which shall be his authority for proceeding to the immediate levying and recovering of such fines, &c. on the goods and chattels of such several persons, or for taking into custody the bodies of such persons in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person taken shall be lodged in the common gaol until the next general or quarter sessions of the peace, there to abide the judgment of the said Court(s).

By section 3, the clerk of the peace or town clerk is required, before he delivers the roll to the sheriff, to make oath as to all fines, &c., which shall have been paid, or otherwise accounted for.

The 4th section, relating to the form of recognizances, and the notice to be given to persons acknowledging the same, is repealed by 11 & 12 Vict. c. 42, s. 34.

By section 5 of 3 Geo. 4, c. 46 (t), if any person, on whose goods the sheriff is required to levy any such *forfeited recognizance* (u), shall give security (v) to the sheriff for his appearance at the next general or quarter sessions, then and there to abide the decision of the Court, the sheriff may discharge him out of custody; but if he

(s) Where a party bound in recognizance to keep the peace was subsequently convicted at petty sessions of an assault, and the conviction was returned to the quarter sessions, it was held that the justices there were not authorized under 3 Geo. 4, c. 46, to order an estreat of the recognizances, but that the proceeding for that purpose should be by *scire facias* as before the act; and the Court of Quarter Sessions having made such order, the Court of Queen's Bench granted a *certiorari* to bring it up for the purpose of its being quashed; *R. v. JJ. West Riding*, 7 A. & E. 583; see *R. v. Cos-*

*sins*, Parker, 54. It is different if the recognizance is to pay costs, *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1. The recognizance taken for a defendant's appearance, upon the return of a distress-warrant, is to be proceeded upon in like manner as other recognizances; 11 & 12 Vict. c. 43, s. 20; see also 18 & 19 Vict. c. 126, s. 6.

(t) See *R. v. JJ. Yorksh.*, 7 A. & E. 389.

(u) And so with regard to fines, issues and amerciaments. 12 & 13 Vict. c. 45, s. 17.

(v) See *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621, S. C.

makes default in his appearance, the Court may forthwith issue a writ of *distringas* and *capias*, or *feri facias* and *capias* against his sureties.

By section 6 (*x*), the sessions are authorized to inquire into the circumstances of the case, and at their discretion to order the discharge of the forfeited recognizance, or of any part of the sum to be paid in satisfaction thereof; and if the party is in custody, the sessions may remand or release him, and may award costs to either party.

Sections 7 and 8 are repealed by the statute 4 Geo. 4, c. 73, s. 12.

By section 10 of 3 Geo. 4, c. 46, the clerk of the peace and other officers are entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the clerk of the peace to an allowance of sixpence for every 100 words, for all copies of the roll sent to the lords of the treasury; and a penalty of 50*l.* is imposed on any sheriff, officer or clerk of the peace for neglect of duty.

By section 14, the clerks of the peace and town clerks are required yearly to deliver into the Court of Exchequer a certificate (*y*) of all such fines, &c. as shall be contained in the several rolls which shall be sent out to the sheriff for the purpose of levying, and which shall have been imposed, in any of the sessions held before Michaelmas in each year.

12 & 13 Vict.  
c. 45.

By 12 & 13 Vict. c. 45, s. 17, after reciting the above act (3 Geo. 4, c. 46), it is enacted, that the proceedings subsequent to the authority thereby given for levying and recovering fines, issues, amerciaments and forfeited recognizances, shall be the same in all respects in the case of fines, issues and amerciaments as are by the act required in the case of forfeited recognizances (*z*).

4 Geo. 4, c. 37.

The stat. 4 Geo. 4, c. 37, s. 1, after reciting stat. 3 Geo.

<sup>r</sup> (*x*) See *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621, *S.C.*

Jer. 42.

(*y*) *Ex parte Hodgson*, 2 Yo. &

(*z*) See ss. 5 and 6 of 3 Geo. 4, c. 46; *ante*, p. 311, *et supra*.

4, c. 46, enacts that justices in sessions shall at the following or any subsequent sessions held after the return of the writ and roll issued from any preceding sessions, at the opening of the Court, insert in any following roll all such fines, forfeited recognizances, &c. as have not been levied or accounted for by the sheriff, &c. or have not been discharged, and so continue such process until it shall be ascertained to the satisfaction of the commissioners of the treasury that the party in default has no goods and cannot be found; it is also provided that the sheriff shall keep the original writs directed to him, and the rolls attached thereto (delivering to the sessions a copy of such rolls on the first day of the sittings of the Court), and such original writs and rolls shall continue in force and be delivered over by the sheriff quitting office to his successor.

By section 3, when a party subject to fines, &c. resides, or has removed into another county, the sheriff is to issue his warrant, with a copy of the writ, to the sheriff of the county where the defaulter is or where his goods are, so that such writ may be executed, and the last-mentioned sheriff must, within thirty days after receipt of the warrant, return to the former sheriff what he has done in the execution of the process.

By section 4, every sheriff, &c. is to render an account yearly of all persons incurring fines, together with the causes of non-payment, and such account is to be transmitted to the treasury.

By section 5, clerks of peace, &c. are to send to the treasury within twenty days from the opening of quarter sessions a copy of the rolls delivered by the sheriff.

By 7 Geo. 4, c. 64, s. 31, where any person bound by 7 Geo. 4, c. 64. recognizance for his own or any other person's appearance to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the peace, or to abide an order in bastardy, makes default, a list is to be made of such defaulters, and

of the particulars of the case; and before the recognizances are estreated it is to be laid before the courts therein mentioned, who may make such order touching the estreating thereof as may seem just to them.

Penalties received by constable or gaoler.

11 & 12 Vict. c. 43.

We have seen that penalties may be paid to the constable having the execution of the warrant or to the gaoler or keeper of the prison to which the defendant has been committed (*b*), and it is enacted, by the 11 & 12 Vict. c. 43, s. 31, that in and by the warrant of distress the constable or other person to whom the same shall be directed shall be ordered to pay the amount levied to the clerk of the division in which the justices issuing the warrant shall usually act. So, if the constable or gaoler or keeper of the prison or other person receive the penalty, he is forthwith to pay it to such clerk, and all sums received by the clerk shall forthwith be paid by him to the parties entitled to the same, under the statute on which the information was framed; and if the statute contain no directions for the payment thereof to any person or persons, then the clerk shall pay the same to the treasurer of the county, &c., or place for which such justices shall have acted, and for which the treasurer shall give him a receipt without stamp. The clerk and the gaoler or keeper of the prison is to keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, in the form given by the act (*c*), or to the like effect, and shall once in every month render a fair copy of such account to the justices at the petty sessions for the division in which such justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of 40s., to be recovered by distress; and the said clerk shall send or deliver every return, so made by him as aforesaid, to the clerk of the peace for the county, &c., or place within

(*b*) *Ante*, p. 306.

(*c*) See Appendix.

which such division shall be situate, at such times as the Court of Quarter Sessions for the same shall order in that behalf(*d*).



SECT. 4.—*Of Commitment for Punishment, or in Default of Payment, &c.(e).*

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5. One Justice may commit	319	Time of Imprisonment	330
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In Writing	id.	7. Bad in part, when bad altogether	333
Under hand and Seal	id.	8. Hard Labour	334
Date	320	9. Commitment for Costs	id.
Name of Defendant	id.	10. Amendment of Warrant	335
Style of Magistrate	id.	11. Execution of Warrant	id.

The power of imprisoning is given either as an original punishment, or as the means of enforcing payment of a pecuniary fine, or in any other manner compelling obedience to the sentence of the magistrate.

Duty of justices in commitment.

This power, in regard to offences cognizable by a summary jurisdiction, is derived solely from statute, and is altogether of a distinct nature from that which justices possess in regard to infractions of the peace.

If a statute assigns this mode of punishment in the first instance, it follows immediately upon, and is the legal consequence of, the judgment. But where it is merely subsidiary to enforcing payment of the fine(*f*), the magistrate cannot legally commit, unless under the provisions of the before-mentioned statute of 11 & 12 Vict.

(*d*) See 11 & 12 Vict. c. 43, s. 30, as to payment of fees of magistrates' clerks.

(*e*) See 1 Burn's Justice, tit. "Commitment," and 6 *id.* tit. "Warrant;" also *ante*, p. 297. Many of

the cases relating to warrants of distress are applicable to warrants of commitment.

(*f*) As by 24 & 25 Vict. c. 96, s. 107, and c. 97, s. 65.

For want of  
distress.

c. 43 (*g*), till he has ascertained the want of sufficient goods to answer the penalty; which should regularly be certified by the officer's return to the warrant of distress (*h*). An action of trespass and false imprisonment was held to lie against a justice of the peace, who, upon a conviction for destroying game, had committed the party forthwith, without endeavouring to levy the penalty on his goods, when it was proved that they were sufficient to answer the amount (*i*). By 11 & 12 Vict. c. 43, s. 22, in all cases in which statutes authorize the issuing of a warrant of distress (*j*), but provide no further remedy if no sufficient distress be found, and in all cases of convictions or orders, where the statute on which the same are founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods can be found, the justice to whom the return is made, or any other justice of the same county, &c., may, if he thinks fit, commit the defendant to the house of correction, or if there be no house of correction, then to the common gaol of the county, &c. for which the justice shall be acting, for any term not exceeding three calendar months, unless the sums adjudged to be paid shall be sooner paid; and by sect. 23, in cases where the statute awards imprisonment in the first instance, for a penalty or non-payment of money, that course is to be adopted, and the penalty is not to be levied by distress. By sect. 24, where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that, in case of default, the defendant shall be imprisoned, or imprisoned and kept to hard labour, and

(*g*) See *ante*, p. 305.

(*h*) *R. v. Hawkins*, Fort. 272, per *Parker, C. J.* 11 & 12 Vict. c. 43, ss. 20 and 21.

(*i*) *Hill v. Bateman*, 1 Str. 710.

(*j*) This section is extended by

21 & 22 Vict. c. 73, s. 6, to cases where statutes provide no mode of raising or levying the penalty or compensation, or enforcing payment of the same.



default is made, the defendant may be imprisoned for the time mentioned in the statute under which the conviction or order was made; and in all such cases, if costs have been adjudged by the conviction or order to be paid by the defendant to the prosecutor or complainant, they may be levied by distress, and, in default of distress, the defendant may be imprisoned in the same gaol for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall be then undergoing, unless such sum for costs, and all costs and charges of the distress, and also of the commitment and conveying the defendant to prison, if the justice think fit so to order, shall be sooner paid (*k*).

Before the 5 Geo. 4, c. 18 (*l*), there was no authority to detain the party in custody until return made to the warrant of distress, unless such a power was specially provided by the statute creating the offence, as it was in several; and some statutes expressly direct the commitment to be after due proof, upon oath, of the want of distress (*m*). But now we have seen (*n*) the party may be detained in custody until the return of the warrant of distress, or may be even committed in the first instance, if it satisfactorily appears to the magistrate that the defendant has not sufficient goods to satisfy the penalty and costs, or that the issuing of the warrant of distress will be ruinous to the defendant and his family.

Upon the return of the want of effects to distrain upon, the justice to whom the return is made ought to issue his warrant of commitment thereupon, under his hand and seal, directed to the constable making the return, or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such

(*k*) See *ante*, p. 306, as to levying costs.

(*l*) Now repealed, but re-enacted in this respect by 11 & 12 Vict. c.

43, s. 20.

(*m*) See 17 Geo. 2, c. 36; 13 Geo. 3, c. 80; 50 Geo. 3, c. 108, s. 7.

(*n*) See *ante*, p. 305.

defendant to prison for the time mentioned in the statute under which the conviction or order was made, unless the sums thereby adjudged to be paid shall be sooner paid (*o*).

Where goods  
sufficient to  
answer part.

If a corporeal punishment be inflicted by statute, in failure of sufficient distress, and it so happen that the offender being convicted of *one* penalty has effects sufficient only to satisfy part, it has been held that the goods ought not to be taken, but the corporeal punishment resorted to; for the law never intended that a man should suffer both punishments for one conviction. And the 19th section of the 11 & 12 Vict. c. 43, as we have already seen (*p*), proceeds upon this principle, enabling the magistrate in certain cases to commit the party, without issuing any warrant of distress. But if the same person be separately convicted in *two* penalties, and his goods are sufficient to satisfy one only, they ought to be levied under one conviction, and the corporeal punishment should be inflicted for the other (*q*).

To what place.

The commitment should be to the house of correction, or, if there be no house of correction within the jurisdiction of the committing magistrate, then to the common

(*o*) See 11 & 12 Vict. c. 43, s. 21. For the form of warrant in such case, see the Appendix. Under a provision in the former act against deer-stealing, 3 & 4 Will. & M. c. 10, adopted into the subsequent act of 16 Geo. 3, c. 30, s. 4, empowering the constable, or the prosecutor, after the conviction, in case the penalty was not forthwith paid, to detain the offender in custody for a reasonable time, till a return could be made to the warrant of distress, not exceeding two days,—Lord Holt said the proceeding ought to be this: “the prisoner, if present, may be detained in custody two days, in which time the justice may make what inquiry he can, if the penalty may be levied by distress; and if he finds there is nothing to distrain, then he must make a record of it, by way of

adjudication, that, it appearing to him the party hath not any goods by which the penalty may be levied, therefore, in pursuance of the statute, he doth award him to prison; which must not be before the end of two days. If the person is absent when convicted, the justice is to make a warrant to distrain; and if there be nothing upon which a distress may be made, after two days he must make a record thereof, as above, and then issue his warrant of commitment;” *R. v. Chandler*, Holt, 214; Carth. 508; 1 Ld. Raym. 545; *R. v. Wyatt*, 2 Ld. Raym. 1196.

(*p*) See *ante*, p. 305.

(*q*) Per Holt, C. J., *Powell*, J. and the Court, 4 Anne, *R. v. Wyatt*, 2 Ld. Raym. 1195; *S. C.* Fort. 132; 11 Mod. 54.

gaol of the county or place for which such justice shall then be acting(*r*).

By 15 Geo. 2, c. 24, justices of a liberty or corporation may commit to the gaol of the county(*s*).

By 11 & 12 Vict. c. 43, s. 29, although *two* justices may be required to convict, a commitment may be legally made by *one*(*t*). One justice may commit.

The warrant of commitment is a precept in writing, under the hand and seal of the justice, directed to a constable and to the keeper of the prison to which the party is to be committed. Form of warrant of commitment.

An order of final commitment to prison must be in *writing*(*u*), and the detention of the party, without such written authority, can be justified no farther than is necessary for making it out(*x*), although an unlawful detention will not vitiate the warrant(*y*). But the detention of a party in custody till the return of a warrant of distress may be by *parol*(*z*). The warrant should be drawn up in writing as soon as possible after the commitment is ordered(*a*). Commitment must be in writing.

The warrant must be directed to the proper gaoler(*b*); and is bad if it only orders in general terms that the defendant be carried to prison(*c*).

It seems also to have been agreed, even before the passing of the stat. 11 & 12 Vict. c. 43, that the warrant must have been under the hand and seal of the justice(*d*); for, Under hand and seal.

(*r*) 11 & 12 Vict. c. 43, s. 21. Under 24 Geo. 3, sess. 2, c. 55, s. 12, the commitment might be either to the county gaol or house of correction, at the discretion of the justice; see *Ex parte Aston*, 12 M. & W. 456.

(*s*) And see *R. v. Amos*, 2 B. & Ald. 533; *R. v. Musson*, 6 B. & C. 74; 9 D. & R. 172; 4 Man. & Ry. Mag. Ca. 186; see also 27 Geo. 3, c. 11. *Arnold v. Gaussen and another*, 8 Exch. 463; *Arnold v. Dimsdale*, 2 El. & Bl. 580.

(*t*) A similar enactment was contained in 3 Geo. 4, c. 23 (now repealed); and see *Franklyn's case*,

1 Mod. 68.

(*u*) 2 Hawk. c. 16, s. 13; see *Mayhew v. Locke*, 2 Marsh. 377.

(*x*) *Hutchinson v. Lowndes*, 4 B. & Ad. 118.

(*y*) *Van Boven's case*, 9 Q. B. 669.

(*z*) 11 & 12 Vict. c. 43, s. 20; *Still v. Walls*, 7 East, 534.

(*a*) See *Re Masters*, 33 L. J., Q. B. 146.

(*b*) *Ante*, p. 301, n. (*e*).

(*c*) See form in Appendix, and *R. v. Smith*, 2 Str. 934.

(*d*) 2 Hawk. P. C. c. 16, s. 13; *Hutchinson v. Lowndes*, 4 B. & Ad. 118. But in *Padfield v. Cabell*, Willes, 411, it was held, that a warrant under

according to *Dalton*(*e*), the seal of the justice is the authority of the officer, who ought to give credence thereto. It is laid down by Lord *Hale*, that without this the commitment is unlawful, and the gaoler is liable to false imprisonment(*f*); and it is now expressly required to be thus authenticated by 11 & 12 Vict. c. 43(*g*).

Date.

The warrant need not be dated, nor state the time from which the imprisonment is to commence; the period of imprisonment will be reckoned from the time of the defendant being taken into custody(*h*). But if he be already in custody undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for the subsequent offence should be forthwith delivered to the gaoler to whom it is directed; and it may be thereby ordered that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant shall have been previously adjudged(*i*).

Name of defendant.

The warrant should name the defendant correctly. Where it directed the constable to take *John Hoyer*, and he arrested the party against whom the information was laid, and against whom the magistrate intended to issue his warrant, and who was supposed to be called *John Hoyer*, but whose name really was *Richard*; in an action by him against the constable for false imprisonment, the warrant was held not to afford any defence, and it was also decided that in such a case a demand of perusal and a copy of the warrant was unnecessary(*k*).

Style of magistrate.

According to *Hawkins*, the warrant ought to express, not only the name of the justice, but his office or autho-

stat. 9 Geo. 2, c. 23, need not be under the *seals* of the justices; see 2 Burn's Justice, tit. "Distress," p. 324.

(*e*) Chap. 196, cites 14 H. 8, c. 16.

(*f*) 1 Hawk. P. C. 583; and see *Bowdler's case*, 12 Q. B. 619.

(*g*) Sect. 21, *et seq.*

(*h*) *Bowdler's case*, 12 Q. B. 612,

619; *Ex parte Foulkes*, 15 M. & W. 612; *Braham v. Joyce*, 4 Exch. 487; overruling in this respect *Re Fletcher*, 1 D. & L. 726; see also *Newman v. Lord Hardwicke*, 8 A. & E. 124.

(*i*) 11 & 12 Vict. c. 43, s. 25.

(*k*) *Hoyer v. Bush*, 1 M. & G. 775; see also *Kelly v. Lawrence*, 33 L. J., Exch. 197.

rity(*l*). It is said, indeed, to have been laid down by Lord *Holt*, on a commitment returned by *habeas corpus*, that the authority need not appear in the warrant; and that it is sufficient, if it be stated in the return(*m*). This is in some measure confirmed by Lord *Hale*, who says, "the mention of the name and authority of the justice, in the beginning of the *mittimus*, is not always necessary; the seal and subscription of the justice to the *mittimus* is a sufficient warrant to the gaoler, for it may be supplied by averment that it was done by the justice"(*n*).

But, however this may be in commitments for breach of the peace, or for safe custody only, it is most regular in commitments on summary convictions, when they are by way of punishment, to insert the name and authority of the committing magistrate; and such statement will be found in the form of warrant given by 11 & 12 Vict. c. 43(*o*).

Thus, the return to a *habeas corpus* by a gaoler was as follows: viz. that the persons named in the writ were committed to his custody by Sir John Fielding, knight, one of his majesty's justices of the peace for the city and liberty of Westminster, by the warrant which was set out in the return, to the following purport:—"Westminster, to wit: Receive into your custody F. G., and I. F., brought before me, and convicted, upon the oath of, &c., for being loose and disorderly persons, &c. Given under my hand and seal, this 23rd day of November, 1770." No name was subscribed to the warrant, but the name of Sir John Fielding was set in the margin over the seal. The commitment thus returned was objected to, because the warrant did not show that Sir John Fielding, who made it, was a justice of the peace, or had power to commit the parties; in answer to which, it was contended, that it was supplied by the averment in the return. Lord *Mansfield*:

(*l*) 2 Hawk. P. C. c. 16, s. 13.

(*m*) 2 Ld. Ray. 980; 3 Salk. 284.

(*n*) 2 H. P. C. 122.

(*o*) Schedule (P. 1).

"This is upon a conviction, and it ought to be shown that the person had authority to convict. It is a commitment in execution, and the authority of the person committing ought to be shown; whereas here it does not even appear by whom they were convicted; it is only said in the warrant, 'brought before me and convicted.' The not showing before whom they were convicted is a gross defect." The defendants were accordingly discharged(*p*).

Must specify the cause and show jurisdiction.

Every warrant of commitment must specify the *cause* and show jurisdiction; and where it is in execution (which it is in all cases of commitment *after* conviction), it must allege the party to have been *convicted* of the offence(*q*). Therefore, where one was brought up by *habeas corpus*, and the warrant was returned in the following form: viz. "Receive into your custody the body of Francis Rhodes herewith, &c., brought before me, I. S., one of his majesty's justices of the peace, by I. A., constable, and *charged* before me on the oath of M. G. for being a rogue and vagabond, within the intent and meaning of an act, &c., (17 Geo. 2), for that the said Francis Rhodes, on &c., at &c., did unlawfully use a certain craft to deceive (setting out the offence of acting as a fortune-teller), contrary to the statute: him, the said Francis Rhodes, therefore safely keep in your custody," &c. The Court, considering this as a commitment by way of punishment, and not for safe custody only, were unanimously of opinion that the commitment was bad, because it only stated that the party had been *charged* with, not that he had been *convicted* of, the offence imputed to him(*r*).

(*p*) *R. v. York*, 5 Burr. 2684; see *Ex parte Addis*, 2 D. & R. 167; 1 D. & R. Mag. Ca. 196; 1 B. & C. 90.

(*q*) It is so alleged in the forms in the schedule to 11 & 12 Vict. c. 43. As to showing jurisdiction, see *ante*, p. 300; also *Eggington v. The Mayor, Aldermen and Citizens of*

*Lichfield*, 5 E. & B. 100; 1 Jur., N. S. 908.

(*r*) *R. v. Rhodes*, 4 T. R. 220. In Hilary Term, 37 Geo. 3, the Court of Queen's Bench quashed a warrant of commitment drawn up in the same words as that above mentioned, which was intended to have effect as a conviction and com-

That the rule laid down in that case is general, and not confined to commitments on the particular act there mentioned, is established by the following case, which was on a commitment under 6 Geo. 3, c. 25, s. 3, in these terms, viz. "Receive into your custody the body of T. Cooper, brought before me W. H., &c., *charged* before me, the said justice, on the oath of, &c., for running away before the expiration of the season for which he was hired, contrary to his contract, as well as against the statute, &c., and him safely keep for one month," &c. It was attempted to distinguish this from the last case, upon the peculiar provisions of the statute upon which that case turned: but the Court said, it could not be distinguished from it, and the defendant was discharged (s).

It is moreover necessary that the warrant show a good conviction (t); and that the offence for which the commitment is made be described with certainty. It has been held, that a commitment of one as an apprentice, or servant, for disobeying his indentures or articles, is bad for uncertainty (u). A warrant of the Court of Quarter Sessions for Tipperary, stating that the defendant stood indicted in the "peace office" of that county for a rescue and a riot, and commanding the police to keep him in

Certainty required.

mitment in execution, and ordered the party to be discharged; 12 East, 78, n. (a); see 2 Inst. 52, 591; 2 Hale, 122.

(s) *R. v. Cooper*, 6 T. R. 509. But in the case of a commitment by a justice of a person to the house of correction, who was suspected to be of insane mind, and about to commit an offence, for which he would have been liable to have been indicted under the 39 & 40 Geo. 3, c. 94, s. 3,—as that was neither a warrant merely for safe custody, nor yet in execution, it was held that it ought not to be considered with the same strictness, and that it was therefore sufficiently certain, where

it stated in the language of the act as a positive fact, that the party had been discovered and apprehended under circumstances that denoted a derangement of mind, and a purpose of committing a crime, to wit, an assault and breach of the peace, for which, if committed, he would have been liable to be indicted; although the warrant did not state the party intended to be assaulted, nor show that the magistrate heard any evidence on oath; *R. v. Gourlay*, 7 B. & C. 669; 1 Man. & Ry. 616.

(t) *Re Peerless*, 1 Q. B. 143.

(u) *R. v. Everett*, Cald. Cas. 26.

custody until the next sessions, was held not to disclose jurisdiction, as the words "peace office" did not show in what Court the indictment was pending; and it was also held to be bad, on the ground that it authorized the *police* to keep the defendant in *their* custody until the next sessions (x). And the commitment will be also bad, if it does not show that the defendant has been guilty of an offence within the statute on which the conviction is founded, as in the following case:—A defendant was committed under 1 Geo. 4, c. 56, which enacted, "that if any person *should wilfully or maliciously do or commit* any damage to any building, &c., and be thereof convicted before any justice, he should forfeit and pay to the person or persons aggrieved, such a sum of money as should appear to the justice to be a reasonable satisfaction and compensation for the damage committed, not exceeding in any case the sum of 5*l.*, which sum should be paid, &c.; and, in default of paying the same, should be committed to the common gaol, or house of correction, for any time not exceeding three months, unless the same was sooner paid;" and the warrant of commitment recited, "that one M. P. had made complaint to the justice that he had lost a post or pale out of his fence, and that he had cause to suspect, and did suspect, that G. H., on whose premises the same was found, *did cut, spoil, and take and carry away* the same: and that whereas the said G. H. did, on &c., appear before the justice, and, not giving the justice any satisfactory account how she came by the post, nor producing the party of whom she bought it, nor any credible witness to testify the sale, she was therefore by him convicted *of wilfully and maliciously carrying away*

(x) *Re Nesbitt*, 2 D. & L. 529. The Court also decided that they would take judicial notice that the common law of England extended to Ireland, and that a "riot" was

a sufficient statement of an offence, although, it seems, "a rescue" would not have been so; see also *Caudle v. Seymour*, 1 Q. B. 889.



*the same*, and was adjudged to pay the sum of 5*l.*, and in default of payment was committed for three calendar months, to be kept to hard labour, unless the sum of 5*l.* was sooner paid." Upon an objection to the validity of this commitment, Mr. J. *Bayley* said, "This commitment is clearly bad. The charge recited is, that the defendant had *cut, spoiled, and taken away*, the post; and the justice convicts her of *carrying it away*. It is perfectly consistent with the statement in the commitment, that somebody else may have cut and spoiled the post, and that she might have carried it away; which is no offence within this act. Therefore, as she is convicted of no offence, she must be discharged" (y). In the form of warrant given by the 11 & 12 Vict. c. 43, it is said, "state the offence as in the conviction;" and where the statutory form was in these words: "Whereas A. B. has been duly convicted, &c., of having [*state offence as in the information*]," it was held that it must show a good conviction, and per Lord *Denman*, C. J., "the warrant requires as much particularity as the conviction, and the form in the schedule, when considered with reference to the nature of the statutory jurisdiction given to justices, ought to be so filled up that the description of the offence may show the jurisdiction" (z).

But the Court of Queen's Bench will not criticise a warrant of commitment with the same strictness to which a conviction is subjected, if there be reasonable ground for presuming that the conviction (on which the commitment is founded) is free from objection (a). Nor is it necessary in the warrant to state the conviction in a precise or tech-

(y) *R. v. Harpur*, 1 D. & R. 222; 1 D. & R. Mag. Ca. 67; and see *R. v. Cavanagh*, 1 Dowl. N. S. 546; *R. v. Dugger*, 5 B. & Ald. 791; 1 D. & R. 460; *R. v. Maby*, 3 D. & R. 570.

(z) *Re Peerless*, 1 Q. B. 143; *R. v. Chaney*, 6 Dowl. 281.

(a) *R. v. Rogers*, 1 D. & R. 156;

1 D. & R. Mag. Ca. 59; *R. v. Helps*, 3 M. & S. 331; *R. v. King*, 1 D. & L. 723, per Patteson, J.; see *Re Fletcher*, 1 D. & L. 726 (overruled as to the main point decided, *ante*, p. 320, n. (h)); and *Re Reynolds*, *Id.* 849.

nical form; but only so as to show that the party has been convicted of some specific offence, and by a person having authority for that purpose. It was not required, therefore, to set forth the evidence, or the facts, in detail, when a statement of them was required in the conviction (*b*). Nor was it necessary to mention the name of the witness; for if by mistake a wrong name was mentioned as that of the witness upon whose oath the conviction was made, it was surplusage, and might be disregarded (*c*).

Commitment  
sustained by  
conviction.

On a return to an *habeas corpus*, signifying that the defendant had been convicted of carrying away deer in a forest, it was objected, that it should have been said, “*of unlawfully carrying*,” &c. *Parker, C. J.*, “There is a difference in the return of a *habeas corpus*, where it is before conviction, and after; for where it is after, you need not be so particular. It ought to be alleged *unlawfully*, if before conviction; but in this case it may be in the conviction, so that that will be well enough” (*d*). And if a warrant of commitment in execution, manifestly defective on the face of it, shows that there has been a conviction, the Court will not notice the defect, until the conviction is returned into Court, if the defect be one that the conviction may cure, and if the applicant is in a position to remove the conviction by *certiorari*; and in such case, if the conviction be right, the defect in the commitment will be cured, provided the latter shows the like offence, as is stated in the conviction (*e*).

So, where a conviction for wilful trespass under the 7 & 8 Geo. 4, c. 30, s. 24 (*f*), for unlawfully and maliciously damaging, injuring, cutting and carrying away a load of

(*b*) *R. v. Walter*, 8 Mod. 5.

(*c*) *Massey v. Johnson*, 12 East, 67, 82.

(*d*) *R. v. Hawkins*, Fort. 272.

(*e*) *R. v. Taylor*, 7 D. & R. 623; 3 D. & R. Mag. Ca. 491; see *R. v. Chaney*, 6 Dowl. 281; *Re Allison*, 10

Exch. 561; 18 Jur. 1055; 24 L. J., M. C. 73; *Re Reynolds*, 1 D. & L. 846; *post*, p. 328, and “*Certiorari*.”

(*f*) Repealed by 24 & 25 Vict. c. 95.

rushes, adjudged the party to forfeit 10s. and costs, "as a reasonable compensation for the damage, &c.;" and the commitment alleged him to have been convicted of having *unlawfully* trespassed upon the complainant's lands, and having cut and carried away a quantity of rushes, and to have been ordered to pay the sum of 10s. penalty and 6s. 6d. costs, which he refused to pay, and then directed him to be kept in the house of correction for one calendar month, or until delivered by due order of law;—upon objection to the commitment in reciting the conviction, that the trespass was not stated to have been *wilful* or *malicious*, but only *unlawful*, it was held that the defect was cured by the 39th section of the act, which provided that no warrant of commitment should be held void by reason of any defect therein, provided it was alleged that the party had been convicted, and there was a good and valid conviction to sustain the same(g). It was objected, also, that the conviction did not support the commitment, for the former was for an injury to *personal*, the latter to *real* property; but it was held, that the conviction and commitment appeared to be for the same offence, although expressed in somewhat different language. A third objection was, that the commitment was for the non-payment of a *penalty*, while the adjudication of imprisonment in the conviction was for the non-payment of a sum of money by way of *compensation* for the damage; but it was held, as the 24th section of the act treats as a *penalty* the sum awarded by the justice, where the party aggrieved is examined in proof of the offence, which was the case in that instance, that there was no foundation for that objection. It was objected, fourthly, that the commitment was bad, because it was for a month, or until he be delivered by due course of law; and the act only authorized a commitment

(g) A similar provision is inserted in the Criminal Law Consolidation Acts (24 & 25 Vict. c. 96, s. 111,

and c. 97, s. 69), and in the recent Larceny Act, 18 & 19 Vict. c. 126, s. 13.

not exceeding two months, unless the penalty and the costs thereof be sooner paid; and on this objection the Court held that the conclusion of the warrant would have been bad, if it had not been aided by the 39th section; but that as there was a good and valid conviction on which the commitment was founded, and which was referred to in the warrant, the conviction and commitment must be read together as explanatory of each other, and that the commitment so explained was sustained by the conviction(*h*). The commitment is to be read with the conviction, and construed in the same way(*i*), and where the warrant gave an insufficient description of the offence, it was cured by a good conviction, which was put in evidence in an action brought against the magistrate(*h*).

But where there is a material variance between the conviction and the recital of it in the warrant of commitment,—as where the commitment is for an offence created by a different statute from that on which the defendant was convicted, although it may relate to the same subject-matter,—the commitment is bad. Where the warrant recited a conviction, adjudging the defendant to pay a penalty, and a certain sum for costs, and directed them to be levied by distress, but the conviction drawn up was silent as to the costs, and there was no evidence that the justices had in fact adjudicated upon them, it was held to be bad, and the justices were held liable to an action of trespass for the seizure of the defendant's goods, and the detainer of his person under such warrant(*l*). But if the conviction and warrant substantially agree, it is sufficient(*m*).

The Court, however, will not assume a good conviction

A good conviction not pre-

(*h*) *Daniel v. Philips*, 5 Tyr. 293; 1 Cr. M. & R. 662.

(*i*) *Tarry v. Newman*, 15 M. & W. 645, 656; *R. v. Mellor*, 2 Dowl. 173.

(*k*) *Stamp v. Sweetland*, 8 Q. B. 13; see as to an order supporting

a warrant, *Coster v. Wilson*, 3 M. & W. 411.

(*l*) *Leary v. Patrick*, 15 Q. B. 266; *Wood v. Fenwick*, 10 M. & W. 195; and see 11 & 12 Vict. c. 43, s. 18.

(*m*) *Barnes v. White*, 1 C. B. 192, 211.

in support of the commitment (*n*); if the writ of *certiorari* be taken away from the applicant, *primâ facie* the conviction will be taken to be such as it is recited in the warrant of commitment; and it lies upon the party who asserts that it is in a different form to bring it before the Court (*o*).

But the magistrates are not bound by the conviction first drawn up, whether it is recited in the commitment or not, and may substitute a more formal one if it be according to the facts of the case as proved, and this may be done at any time before the conviction has been quashed, or the defendant discharged from custody, by reason of its invalidity (*p*). So, where an act of parliament authorizes magistrates to commit offenders to prison (as under the Masters and Servants Act, 4 Geo. 4, c. 34, s. 3 (*q*)) without a previous conviction, if a good warrant of commitment be returned, the Court will not inquire into the validity of a previous document under which the prisoner was in fact committed; since a conviction, if such were necessary, might be drawn up valid in form to support the commitment (*r*). The Court however will not, at the desire of the committing magistrates, direct or advise the gaoler to substitute a return to a writ of *habeas corpus* for the one proffered to be made (*s*).

Where the warrant of commitment of a party, for *contempt* in refusing to give evidence on a specific charge brought before the justice, omitted to allege that the party

sumed in support of commitment.

Commitment for contempt.

(*n*) *R. v. Tordoft*, 5 Q. B. 933; *R. v. Cavanagh*, 1 Dowl. N. S. 547; *R. v. King*, 1 D. & L. 723.

(*o*) *Re Reynolds*, 1 D. & L. 846, 851; *R. v. Chaney*, 6 Dowl. 281. There are also some defects arising out of the warrant itself, which no conviction, however good, can cure.

(*p*) *Ante*, p. 289.

(*q*) *Ante*, p. 165.

(*r*) *R. v. Richards and others*, 5 Q. B. 926. The gaoler returned the

first warrant, which was informal, and then stated that afterwards, and while the prisoners were in his custody, the magistrates caused to be delivered to him another warrant of commitment, which was then set out and was good; see also *Lindsay v. Leigh*, 11 Q. B. 455; and *Ex parte Cross*, 2 H. & N. 354; 26 L. J., M. C. 201; *ante*, p. 289, n. (*e*).

(*s*) *Re Fletcher*, 1 D. & L. 726; and see *R. v. Turk*, 10 Q. B. 540.

was duly apprized that there was such a charge under inquiry before the justice, the warrant was held defective (*t*).

Where must  
allege want of  
distress.

Where imprisonment is only inflicted by the statute as an alternative punishment for want of sufficient distress, the commitment ought to notice that as the fact (*u*). In one case a commitment was quashed, because it only stated that *the officer had returned* to the warrant of distress, that the defendant had no goods, instead of expressly alleging the fact to be so (*x*). But in a later case it was held to be sufficient to state in the warrant of commitment that the constable had certified that there was no distress (*y*).

Time of imprisonment and  
condition of  
discharge, &c.

It must be distinctly expressed in the warrant, whether the commitment be for a certain time, or only till the payment of a fine. The defendant ought to know for what he is in custody, and how he may regain his liberty (*z*). Therefore, if he be committed for the fine, it ought to be till he pay the fine; if the intent be to punish him not only by fine, but by imprisonment, it ought to order imprisonment for such a time, and from thence also till he have paid the fine. A warrant, reciting that the party had been convicted by the College of Physicians, and fined 20*l.*, and was thereby committed to gaol till *he should be delivered by the said college*, or otherwise by due course of law, was held to be bad, as being too general, and not

(*t*) *Cropper v. Horton*, 8 D. & R. 166; 4 D. & R. Mag. Ca. 42. The Court, however, abstained in this case from giving any opinion, as to the power of the justice to commit for such a contempt. See now 11 & 12 Vict. c. 43, s. 7, and form of warrant in the Appendix, which does not state that the party was apprized of the charge, although it states the laying of the information.

(*u*) 11 & 12 Vict. c. 43, s. 21.

(*x*) *R. v. Chandler*, 1 Ld. Raym. 545.

(*y*) *R. v. Whitlock*, 1 Str. 263.

The form (No. 5), Sched., 11 & 12 Vict. c. 43, states that it appears to the justice as well by the return as otherwise, that the constable has made diligent search for the goods, but that no sufficient distress could be found; and see s. 22 of the same act.

(*z*) *Dr. Groenvelt's case*, 1 Ld. Ray. 213; see *R. v. Rogers*, 1 D. & R. 156; *R. v. Helps*, 3 M. & S. 331; *Ex parte Addis*, 2 D. & R. 167; and the forms given by 11 & 12 Vict. c. 43; see *ante*, p. 256, where there are several defendants.

sufficiently ascertaining whether the commitment was a distinct punishment, or merely for enforcing the fine (a).

The time for which the party is committed, and the condition upon which he is to be discharged, must strictly conform to the directions of the statute, from which the authority is derived. Thus, a warrant for the commitment of the putative father of a bastard child, "until he should pay the sum due, or until he should be otherwise delivered by due course of law," was held to be bad; the magistrate not being authorized, under 49 Geo. 3, c. 68, s. 3, to make such a warrant which ought to have given the party committed the option either of paying the money, or of staying three months in prison, and being thereby altogether discharged from the payment (b).

If the imprisonment be not for any certain period, but generally till the payment of a fine, or the performance of some other act, the condition must be distinctly expressed, and such as is authorized by statute. If it be till payment, the sum must be fixed. Thus, a conviction and commitment of the defendants for a forcible entry, "there to remain till they shall have paid a fine to the king," the justices not having assessed any fine, was held to be irregular (d).

Must specify condition of discharge.

So, under the statute 6 Geo. 1, c. 16, s. 1, which empowers the magistrate to commit, till the penalty and charges are paid, a commitment for nine months, or until the sum of 15*l.*, "together with the charges previous to, and attending the conviction, shall be paid," was held to be bad; for want of ascertaining the exact sum, by the payment of which the defendant might be released (e). The same point was determined on a commitment by jus-

Till payment, &c. of indefinite sum, bad.

(a) *Dr. Groenvell's case*, *supra*; and see *Prickett v. Gratrex*, 8 Q. B. 1020; *Ex parte Besset*, 6 Q. B. 481.

(b) *Robson v. Spearman*, 3 B. & Ald. 493. As to time of the commencement of imprisonment appearing, see *ante*, p. 320.

(d) *R. v. Elwell*, 2 Ld. Ray. 1514; Str. 794; so the costs must be ascertained and stated in the warrant; 11 & 12 Vict. c. 43, s. 21; see *ante*, p. 284.

(e) *R. v. Hall*, Cowp. 60.

tices of the defendant, a toll-gate keeper, for refusing to account, "and until he do account and pay what shall be due to the proprietors of the toll." This was decided to be an illegal commitment, because no certain sum was thereby appointed to be paid; so that the defendant might remain in prison for life (*f*).

In like manner, where a conviction took place on the Stage-Coach Act, 50 Geo. 3, c. 48, and the commitment recited the conviction, from which it appeared, that the defendant had been committed by the justices for three months, "unless, before that time, he pays the sum of 6*l*., together with the expenses of the warrant, viz. a sum of — shillings," without specifying the sum which he was to pay for expenses; the Court held, on the authority of *R. v. Hall* (*g*), that the commitment was bad on the face of it; "for the defendant here cannot know on what terms he is to be discharged, and the gaoler is equally in the dark. The conviction and commitment should have ascertained precisely what sum for expenses the defendant was to pay" (*h*).

By due course  
of law.

Under the act 35 Eliz. c. 2, which empowers the justice to examine into certain matters, and commit such persons as refuse to answer, a commitment "till discharged by due course of law," was held to be bad (*i*). So, where justices committed a defendant for a contempt, "*until he should be discharged by due course of law*," the Court held that, this being a commitment for punishment, and no time certain mentioned, it was bad on the face of it, and ordered the defendant to be discharged (*k*).

So, under the Vagrant Act, 17 Geo. 2, c. 5, s. 7 (see 5 Geo. 4, c. 83), which directs the offender to be imprisoned till the next sessions, or for any less time, as the justice

(*f*) *R. v. Catherall*, Fitz-Gib. 266.

(*g*) Cowp. 60.

(*h*) *R. v. Payne*, 4 D. & R. 72; 1 D. & R. Mag. Ca. 67.

(*i*) *Yoxley's case*, 1 Salk. 351.

(*k*) *R. v. James*, 1 D. & R. 559; 1 D. & R. Mag. Ca. 131; 5 B. & A. 894. It was, however, by no means taken for granted in this case, that justices have power to commit for a contempt.



shall think proper, a commitment, ordering the party to be detained, not for any limited time, but *until he shall be discharged, according to the laws and customs of this realm*, was deemed invalid (*l*).

And where justices committed the late overseer of a parish, under 17 Geo. 2, c. 38, upon a conviction (on the complaint of the succeeding overseers) for neglecting and refusing to deliver over a certain *book* belonging to the parish, called *The Bastardy Ledger*, and committed him, in pursuance of their adjudication, “until he should have yielded up *all and every the books concerning his said office of overseer belonging to the parish*,”—the Court held the commitment void, *in toto*; as the condition annexed to the imprisonment extended beyond what was previously required of him (*m*).

Condition of discharge must agree with the cause of conviction.

A commitment by the Vice-Chancellor of Oxford, stating the offence to be carrying goods without a licence, and ordering the party to remain in custody, till he should give security to carry no more, and to observe the statutes of the university for life, was adjudged to be an illegal commitment (*n*).

If a commitment be bad in part, it is, in most instances, bad *in toto*. Where a party was committed until he paid two several sums of money, one of which was not due, the Court quashed the commitment altogether (*o*).

Warrant bad in part.

By stat. 18 Geo. 3, c. 19, s. 1, justices are empowered to award costs upon nonpayment of a poor-rate, but the period of imprisonment in case of nonpayment of the costs is limited to one month. A warrant under this act, reciting nonpayment of the rate and costs, and the sum total to which they amounted, and directing the constable

(*l*) *R. v. Hall*, 3 Burr. 1636; *Ex parte Besset*, 6 Q. B. 481.

(*m*) *Groome v. Forrester*, 5 M. & S. 314; and see *Leary v. Patrick*, 15 Q. B. 266.

(*n*) *R. v. Barnes*, 2 Str. 917; vide *R. v. James*, 5 B. & A. 894;

1 D. & R. 559; 1 D. & R. Mag. Ca. 131.

(*o*) *Ex parte Addis*, 2 D. & R. 167; 1 D. & R. Mag. Ca. 196; 1 B. & C. 90; see *Goff's case*, 3 M. & S. 203; *Skingley v. Surridge and another*, 11 M. & W. 503, 516.

to take the defendant to prison "there to remain until payment of the *said sum*," was held bad *in toto*, and a party arrested under it, who had paid the money under protest, was held entitled to recover the whole amount so paid, although the rate was really due (*p*). But where the legal can be distinguished from the illegal part, and there has been a demand and seizure only in respect of the legal part, the warrant is good and affords a justification to that extent (*q*). In the case, which led to this decision, *Parke, B.*, said, "On the face of the warrant, the sum demanded for the rate (which on this branch of the argument is assumed to be legally demanded), is distinguished from the sum which is assumed to be illegally demanded; the rate legally due was duly claimed and refused, and the plaintiff had the means of tendering the precise sum to save the necessity of seizing or selling, and nothing was done under that distress, which the warrant to distrain for the poor-rate did not justify" (*r*).

Hard labour.

If the statute orders a commitment with hard labour, it must be so signified in the warrant. Where the statute, besides ordering a commitment to prison, adds also, "there to remain, and be corrected and kept to hard labour," the *correction* understood is, by whipping (*s*).

Commitment  
for costs.

The form of a commitment for *costs*, in default of sufficient distress, is settled by the statute, and will be found in the Appendix (*t*).

(*p*) *Clark v. Woods and others*, 2 Exch. 395; and see *Sibbald v. Roderick*, 11 A. & E. 38, where a warrant issued for a single sum made up of regular and irregular rates.

(*q*) *Skingley v. Surridge and another*, 11 M. & W. 503, 515; on this ground distinguished in the judgment from *Milward v. Caffin*, 2 W. Bla. 1330; *Hurrell v. Wink*, 8 Taunt. 369; and *Sibbald v. Roderick*, *supra*.

(*r*) See also 12 & 13 Vict. c. 14, and *Walsh v. Southworth and others*,

6 Exch. 150. By 11 & 12 Vict. c. 44, s. 4, it is enacted, that no action shall lie against a justice for granting a distress warrant against any person named and rated in a poor-rate, which has been made, allowed and published, by reason of any defect in the rate, or of such person not being rateable.

(*s*) *R. v. Hoseason*, 14 East, 607; *Wood v. Fenwick*, 10 M. & W. 195; and see *Whitehead v. The Queen*, 7 Q. B. 582; *ante*, p. 256.

(*t*) See Appendix, tit. "Costs;" and *ante*, p. 306.

By the 3 & 4 Will. 4, c. 53, one of the acts against smuggling, it is provided by sect. 90, that the justices may amend any conviction or warrant of commitment, whether before or after conviction. Four days after the committal of a party, who had been convicted under this act, the warrant, which was defective in point of law, was withdrawn from the gaoler's possession, and another substituted, it did not appear by whom. The second warrant was of the same date, and signed and sealed by the same justices as the first, and did not materially vary from it, except that in the recital of the conviction certain cordage was stated to be adapted for "slinging" casks, instead of "slinging *or* sinking;" and the name of the place, at which the party was stated to have been detained for his offence, was altered. The above facts, and copies of the warrants, being returned on *certiorari* and *habeas corpus*; it was held, that the Court could not presume, either from the facts returned, or from the warrants, that the second warrant was substituted by the justices, as an amendment of the first, in pursuance of the authority given them by the act; and that the prisoner therefore was entitled to be discharged (*u*).

Amendment of warrant, under a special provision in an act of parliament.

The warrant is directed "to the constable of C., and to the keeper of the [House of Correction] at — in the said [County] of —," and may be executed anywhere within the jurisdiction of the convicting magistrate. But formerly, except the constable who was specifically named, the others could only execute it each within his own precinct (*v*).

Execution of warrant of commitment.

(*u*) *In re Elmy*, 1 Ad. & E. 843; 3 Nev. & M. 733; 1 Nev. & Man. Mag. Ca. 378; *R. v. Chaney*, 6 Dowl. 281, 289; see *ante*, p. 289, n. (*e*), as to substituting a good for a bad warrant.

(*v*) *Blatcher v. Kemp*, Maidstone Summer Assizes, 1782; 1 H. Bl. 15, n. In — *v. Norman*, 1698, it was ruled by Holt, C. J., that a con-

stable may execute the warrant of a justice of peace, &c. out of his liberty, but he is not compellable to do so. This, it may be supposed, is upon the presumption that he is mentioned *by name* in the warrant; and see *Gimbert v. Coyney*, 3 D. & R. Mag. Ca. 323, *post*; see 1 Burn's Justice, tit. "Constable," p. 908, 29th edit.; *ante*, p. 302.

It is now provided as we have seen by 11 & 12 Vict. c. 43, s. 3, that such warrant may be backed for the purpose of execution out of the jurisdiction of the justice who first granted the warrant (*w*).

It had also been provided, by 24 Geo. 2, c. 55, that if any person against whom a warrant is issued shall escape into any other county, any justice of that county, upon proof on oath of the handwriting of the justice granting the warrant, may indorse his name thereon, which shall be a sufficient authority to the person to whom the warrant is directed to execute it in such other jurisdiction, and to carry the offender before the justice who indorsed the warrant, or some other justice of that county, in case the offence be bailable; but if not, then before a justice of the county where the offence was committed.

Production of  
warrant.

The officer at the time of the arrest should have the warrant ready to be produced, if its production should be required by the party arrested (*x*).

Cannot be on  
Sunday.

It has been held, that by the construction of the statute 29 Car. 2, c. 7, s. 6, which prohibits the execution of any process, warrant, &c. on the Lord's Day, (except in cases of treason, felony or breach of the peace), a warrant of commitment for a penalty cannot be executed on a Sunday, that the apprehension on that day is wholly void, and the defendant is entitled to be discharged out of custody (*y*). Nor can a prisoner so arrested be legally detained under a second warrant subsequently lodged against him, which has been issued at the instance of the same parties, though not in the same capacity, *e. g.* as

(*w*) *Ante*, p. 24.

(*x*) *Galliard v. Laxton*, 2 B. & S. 363; 31 L. J., M. C. 123.

(*y*) *R. v. Myers*, 1 T. R. 265, on the Lottery Act; *Taylor v. Freeman*, Sel. N. P. 921 (9th edit.); *Re Ramsden*, 3 D. & L. 754; *Ex parte Eggington*, 2 El. & Bl. 717; 23 L. J., Q. B. 41, S. C. In *Taylor v. Phillips*, 3 East, 155, Lord Ellenborough, C. J., said, that it was a matter of

public policy that no proceedings of the nature described in the statute should be had on a Sunday, and that they could not be made good by any assent or waiver by the party illegally arrested. The statute of Charles authorizes arrest on a Sunday for any *indictable* offence; *Rawlins v. Ellis*, 16 M. & W. 172; see also 11 & 12 Vict. c. 42, s. 4.

commissioners under a local act instead of as a town council. But a detainer under a *ca. sa.*, subsequently issued by a third party and without collusion, is a valid ground for refusing to discharge the prisoner (z).

If the offender be already in execution in the Queen's Bench, he may be there charged criminally by a justice's warrant, but cannot be taken out of the custody of that Court, and sent to the county gaol (a). Whenever a defendant already in custody is adjudged to be imprisoned upon any information, the warrant of commitment for such subsequent offence should be forthwith delivered to the gaoler, to whom it is directed, and the justice, if he thinks fit, may order by the said warrant that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant shall have been previously adjudged or sentenced (b).

Where offender already in custody.

By 3 Jac. 1, c. 10, it is enacted, "that any persons, who shall be committed to the common gaol by any justice for any offence, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them, and the charges of such as shall be appointed to guard and shall guard them thither; and, on refusal, the justice may levy the amount by appraisement and distress of his goods." So by 11 & 12 Vict. c. 43 (c), these charges may be imposed on the defendant. And by 27 Geo. 2, c. 3, in any county, except in Middlesex, the person committed not having sufficient goods or money within the county to bear the charges of himself and attendants, any justice for the same county may, upon application of the constable who conveyed the prisoner,

Charges of commitment.

(z) *Ex parte Eggington and Re Ramsden*, *supra*; see also *Eggington v. The Mayor, Aldermen and Citizens of Lichfield*, 5 E. & B. 100; 1 Jur., N. S. 908.

(a) *R. v. Woodham*, 2 Str. 828; see *Brandon v. Davis*, 9 East, 154, and *Guthrie v. Ford*, 4 D. & R. 271, where it was held, that a prisoner, under

criminal process in the house of correction, cannot be brought up by *habeas corpus*, for the purpose of being charged in the custody of the marshal, upon a bailable writ, and re-committed to his former custody so charged.

(b) 11 & 12 Vict. c. 43, s. 25.

(c) See ss. 21—24, 26, 27, *ad finem*.

and upon examination on oath, allow the reasonable charges, and order them to be paid by the treasurer of the county (*d*).

#### Discharge.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not, as a general rule, admit of bail (*e*). And although a right of appeal be given by the statute to the next sessions, which may not be till after the term of imprisonment is expired (as is the case with the late and present Vagrant Acts, 17 Geo. 2, c. 5, ss. 7 and 26, and 5 Geo. 4, c. 83, s. 11), yet after a commitment by one justice, it is not competent for others to discharge the defendant, upon his appealing to the next sessions, and giving bail to prosecute that appeal (*f*).

#### Tender of penalty.

But, if the commitment be till payment of a certain fine, it follows of course, and is moreover now expressly provided by the 11 & 12 Vict. c. 43, s. 28, that the party is entitled to be set at liberty upon tender or payment thereof (*g*). Where an officer, after a tender of a penalty, persisted in conveying a person to gaol, insisting also upon the payment of a further sum indorsed by the justice on a warrant, under the name of costs, he was held liable to an action of false imprisonment (*h*). This was in a case, however, where the magistrate had no special power, by the act, to commit for costs; where he has such power and exercises it, the costs must be tendered as well

(*d*) As to the expenses of conveying vagrants to gaol, see 5 Geo. 4, c. 83, s. 8.

(*e*) *Anon.* 11 Mod. 45, 52. But on a commitment until the next sessions, under the former Vagrant Act, 17 Geo. 2, c. 5, s. 32, two magistrates, of whom the committing magistrate must have been one, might discharge the prisoner before the sessions; *R. v. Rhodes*, 4 T. R. 220. There does not, however, appear to be any such power given them by the present Vagrant Act,

5 Geo. 5, c. 83; see *post*, p. 345, and "Certiorari," as to the defendant being bailed until validity of conviction is determined.

(*f*) *R. v. Brooke*, 2 T. R. 190; *post*, p. 345.

(*g*) So by 24 & 25 Vict. c. 96, s. 107. According to Dalton, he might have been released, upon his finding sureties to pay it; *Dalt.* c. 170, s. 12, and *Chaddock v. Wilbraham*, 5 C. B. 650.

(*h*) *Smith v. Sibson*, 1 Wils. 153.

as the penalty (i). The tender must be to the party authorized to receive the amount. Where a warrant directed the constable to take the defendant to gaol, and there to deliver him to the keeper, who was to detain him for three months, unless he should sooner pay the money to the overseers, the constable executing the warrant was held not to be authorized to receive the money (j).

Where it was doubtful, whether the convicting justices had power to issue a warrant of commitment, the Court of Queen's Bench would not grant a *mandamus* to compel them to do so (k).

Compelling the issuing of warrant.

The warrant of commitment, unless it is expressly made returnable at a particular time, remains in force till it be fully executed, whatever length of time that may be, so long as the magistrate is living (l). If the offender be apprehended, and suffered to go at large, upon an offer to find security, which is not fulfilled, it seems that he may be apprehended again upon the same warrant (m).

Warrant in force till return day.

Liberation on condition not fulfilled.

(i) *Walsh v. Southworth and others*, 6 Exch. 150; *Atkins v. Kilby*, 11 A. & E. 777.

(j) *Atkins v. Kilby*, *supra*, and see *Id.* as to taking the prisoner by the most convenient, though a circuitous, route.

(k) *R. v. Twyford*, 5 Adol. & E. 490; *R. v. Lord Godolphin*, 8 A. & E. 338; *Ex parte Fulder*, 8 Dowl. 535; *Re Williams*, 9 Q. B. 976. In the latter case, the party had been previously committed for the same offence, but had been discharged on *habeas corpus*. The Court, in the exercise of its discretion, refused to

interfere, although it was suggested that the discharge had taken place on account of a defect in the warrant. In *R. v. Codd*, 9 A. & E. 682, a *mandamus* was granted to compel the issuing of a warrant of commitment upon an order of affiliation.

(l) In the forms given in the schedule to 11 & 12 Vict. c. 43, no time is limited for the return of the warrant.

(m) *Dickenson v. Brown*, Peak. N. P. C. 234. That was the case of a warrant to apprehend the putative father of a bastard child. See *post*, "Certiorari."

## CHAPTER III.

## OF APPEAL TO THE SESSIONS.

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SECT. 1.—*Of Appeal to the Sessions, when it lies (a).*

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How autho-  
rized.

AN appeal from the conviction of justices to the sessions is not a matter of common right, but of special provision (*b*).

The privilege of appeal, which now usually accompanies the power of summary conviction given by statute, does not seem to have been introduced till after that mode of judicature had been in use for some time. The first mention of an appeal is found in the statute 12 Car. 2, c. 23, s. 31, imposing duties on beer, ale, and other liquors; which, in case of the refusal of two justices to proceed upon complaint, authorizes the sub-commissioners of excise for the district to take cognizance of it, and gives an appeal from *their* judgment to the next quarter

(*a*) The justices, as we have seen, ought to return the conviction to the sessions, and this whether an appeal be given in the particular case or not; *ante*, p. 293. If a magistrate, after receiving due notice of appeal, neglects to return the conviction, whereby the party is prevented from prosecuting his appeal, he is liable in an action for the special damage; *Prosser v. Hyde*, 1 T. R. 414. When an appeal is the only remedy and replevin does not lie; *The Mersey*

*Docks Company v. Cameron*, 9 C. B., N. S. 812; 30 L. J., M. C. 185, 195; *R. v. Bradshaw*; 29 *Id.* 176. A party is not bound to appeal against a rate made without jurisdiction; *The Governor of Bristol Poor v. Wait*; 1 A. & E. 264; *Freeman v. Read*, 4 B. & S. 174; 10 Jur., N. S. 149.

(*b*) 1 M. & S. 448, and 6 East, 514; 2 T. R. 509, 510; *R. v. Cashio-bury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485; *R. v. Hanson*, 4 B. & Ald. 521.



sessions. The same provision is repeated in the Excise Act, 12 Car. 2, c. 24, s. 45.

The next statute, which allows an appeal in the case of a summary conviction, is the Conventicle Act, 22 Car. 2, c. 1, s. 6. It is worthy of remark, that the appeal provided by that statute is not to the justices in sessions, as is usual, but to a jury to be there summoned to try the facts. This is the only instance of an appeal of that nature, in regard to summary convictions; except in the case of the forfeiture of a publican's licence, under the 9 Geo. 4, c. 61, s. 21, and the stopping up, &c., of a highway under the 5 & 6 Will. 4, c. 50, ss. 88, 89 (c). In the former Game Act, 22 & 23 Car. 2, c. 25, which immediately followed the Conventicle Act, and in all the other acts since that time which give an appeal from the conviction of justices out of sessions, with the exception of the 9 Geo. 4, c. 61, and 5 & 6 Will. 4, c. 50, before mentioned, it is to the judgment of the justices in quarter sessions, without the intervention of a jury.

A right of appeal must be given by express enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated (*d*). Must be expressly given.

Some acts of parliament, however, expressly exclude an appeal,—as the 42 Geo. 3, c. 109, s. 5, and many other acts,—a provision which is wholly unnecessary, as no appeal lies in any case, unless expressly given by statute.

With reference to this part of the subject, it may be proper to notice, that on occasion of any new act relating to the duties of excise, it was usual to insert a clause, de- Question as to appeal under excise acts.

(c) See *ante*, p. 14, and *R. v. JJ. Worcestersh.*, 3 El. & Bl. 477.

(d) *R. v. Stock*, 8 A. & E. 405; *R. v. Recorder of Bath*, 9 *Id.* 871; *R. v. Recorder of Ipswich*, 8 Dowl. 103; see *Lefeuve v. Miller*, 8 El. & Bl. 231; 26 L. J., M. C. 175; *Christie v. St. Luke, Chelsea*, 8 El. & Bl. 992; 27 L. J., M. C. 153. Where

the right of appeal exists, a *mandamus* lies to the Court of Quarter Sessions to hear it, if they refuse to do so, but the application for the writ must be made in the term next after the hearing has been refused; *Reg. v. Recorder of Richmond*, El., Bl. & El. 253; 27 L. J., M. C. 197.

claring that all the powers, &c., given by 12 Car. 2, c. 23, and c. 24 (called the Hereditary Excise Acts) (*e*), or by any other law in force, relating to the revenue of excise, should be applied to the act in question (*f*). A doubt had sometimes arisen upon the effect of such a clause, as it regarded the right of appeal, which was found in some of those statutes, and not in others, but this difficulty appears to have been removed by statute 7 & 8 Geo. 4, c. 53, s. 82 (*g*).

But, in like manner, as a right of appeal cannot be extended by equitable construction (*h*), so the operation of a general clause in an act of parliament, which gives the right of appeal, cannot be excluded by inference only, without some positive enactment in the statute on the matter in question. Thus, a clause in a private Inclosure Act declared that no item or charge in the account of the commissioners should be *binding* on the parties concerned, unless the same should have been duly allowed by a justice of the peace; and by a subsequent clause an appeal was

(*e*) *R. v. JJ. Surrey*, 2 T. R. 509.

(*f*) See for example, 25 Geo. 3, c. 72; 42 Geo. 3, c. 38, s. 30.

(*g*) On the strength of this statute the Inland Revenue authorities are understood to be of opinion that an appeal lies in excise cases under section 84 of the above statute of Geo. 4th. How far an appeal lies against "penalties" under clauses mentioning only "forfeitures and offences," see *R. v. Skene*, 6 East, 514, 518; *R. v. Whitbread*, Doug. 533; 48 Geo. 3, c. 74, s. 15.

(*g*) *R. v. Hanson*, 4 B. & A. 519, in which Abbott, C.J. said, "although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute;" and see *R. v. Bedwell*, 4 El. & Bl. 213; 24 L. J., M. C. 17, S. C., in which it was held. that no appeal lay against an order of justices made under 4 Geo. 4, c. 34, s. 5, for the payment of weekly wages adjudged to be due from a master to his servant, upon a

complaint under 20 Geo. 2, c. 19, although the justices might have acted without jurisdiction. The 5th section enacted that the order should be "final and conclusive." Some statutes limit the appeal according to the amount of penalty imposed, and in such cases, in order to see whether an appeal lies, the amount must be estimated exclusive of costs; *R. v. JJ. Warwicksh.*, 6 E. & B. 837; 25 L. J., M. C. 119; and see *Ricardo v. The Maidenhead Board of Health*, 2 H. & N. 257; 27 L. J., M. C. 73. The recorder of a borough has no jurisdiction to hear an appeal, under the 9 Geo. 4, c. 61, s. 27, against a refusal by the borough justices to grant a licence to keep an inn, ale-house, or victualling-house, such jurisdiction being expressly taken away by the proviso to sect. 105 of 5 & 6 Will. 4, c. 76; *R. v. Recorder of Bristol*, 4 El. & Bl. 265.

given to the party grieved by anything done in pursuance of that or the General Inclosure Act, "other than and except such determinations, as were by that or the General Inclosure Act declared to be *binding*, final, and conclusive." It was argued against the right of appeal, that although the clause relating to the accounts of the commissioners did not expressly state that they were to be binding and conclusive when allowed by a justice, yet that it must be so inferred; for to say, that the accounts shall not be *binding* until allowed, is in effect saying, that when allowed they shall be binding. But the Court held, that the words "binding, final, and conclusive," in the excepting part of the appeal clause, must be confined to those proceedings which were made binding, final and conclusive by some affirmative declaration in the statute; and that there being no such declaration in the present instance, the appeal was not taken away (*i*). It appears, however, from the following case, that if an order of commitment be excepted out of the appeal clause, a conviction and commitment comprised in one instrument cannot be made the subject of appeal (*k*). The defendant had been committed by virtue of an instrument, which was thus set out: viz. "To the constables, &c. and to the keeper of the House of Correction at, &c.: Whereas J. Thompson, a hired servant to E. S. of &c., collier, is this day before us, two of his majesty's justices of the peace for the said county, lawfully convicted, as well by the oath of the said E. S., as otherwise, of being his lawful hired servant, and of having absented himself from his service in the parish of, &c., without his consent, before the expiration of the term of his contract to serve; these are, therefore in his majesty's name, to charge and command you, the said constable, to take and convey the said I. T. to the House

Acts excluding  
appeal.

(*i*) *R. v. JJ. Cumberland*, 1 B. & C. 64; 1 D. & R. Mag. Ca. 240; *R. v. Bedwell*, 4 El. & Bl. 213; 24 L. J., M. C. 17, S. C.; and as to the granting of a rule to hear an appeal,

see *R. v. JJ. Buckinghamsh.*, 4 El. & Bl. 259; 18 Jur. 1079 (Q. B.); *Re Blues*, 5 El. & Bl. 291; 1 Jur., N. S. 541; 24 L. J., M. C. 138.

(*k*) See *ante*, p. 165.

of Correction aforesaid, and deliver him to the keeper, and you, the said keeper, to receive the said I. T. into your custody, and safely him there keep two months from the date hereof. Dated, &c.”—The defendant gave notice of his intention to appeal against the conviction, and duly gave a recognizance, and entered his appeal at the sessions; but, no conviction being returned by the magistrate, the appeal was dismissed without trial. By 6 Geo. 3, c. 25, s. 5 (*l*) (an extension of the statute 20 Geo. 2, c. 19), upon which the proceeding was founded, it is provided, “that, if any person shall think himself aggrieved by such determination, order, or warrant of any justice as aforesaid, *except an order of commitment*, every such person may appeal to the next sessions,” &c. On a rule for a *mandamus*, it was contended for the appeal, that a conviction and commitment, being distinct things, could not, in legal contemplation, be united by being blended in one instrument; and that the latter only being excepted out of the appeal clause by the designation of an order of commitment, an appeal ought to lie against the *conviction*, under the general terms of that clause; and that, unless an appeal lay to get rid of the conviction, the party grieved would be without redress; for, so long as the conviction remains in force, it is an answer to any action of trespass. But, by Lord *Ellenborough*, C. J., “It is not for us to say, whether it may be convenient and proper to provide a remedy by appeal for a party grieved by a commitment in execution under this act; we can only declare what the legislature have said in this case; and when, by excepting an order of commitment out of the appeal clauses, they have said, that there shall be no appeal against such an order,—and when the commitment must, for this purpose, be taken to be one and the same thing with the conviction,—we have no discretion left to exercise upon the subject; and it does not become us to scan the wisdom of the pro-

(*l*) And see 58 Geo. 3, c. 51, and 4 Geo. 4, c. 34.

vision which the legislature has enacted" (m). The rule for a *mandamus* was discharged.

That the party may have the full benefit of the right of appeal, some statutes contain a provision requiring the convicting magistrate, at the time of the conviction, to make known to the party his right to appeal (n). Convicting magistrate to give notice of right.

The question whether execution is suspended by an appeal mainly depends upon the statute under which the conviction or order is made. In some cases execution is expressly stayed pending the appeal, in others it is stayed on certain conditions; in some few cases, where no such express terms are found in the act, it may be right to allow execution to go notwithstanding the appeal, in order to give full effect to the intention of the legislature; but, as it has been lately said, "in the vast majority of cases it would be exceedingly improper in the justice to grant a warrant after the notice and recognizance, and before the hearing of the appeal, or before the time for hearing it has expired; and acting from a corrupt motive, he might be liable to an action on the case for maliciously granting it" (o). On the occasion which led to these observations, it was decided by the Court of Queen's Bench that the jurisdiction of a magistrate under 7 & 8 Vict. c. 101, s. 3, at any time after the expiration of one month from the making of an order for the maintenance of a bastard child, to grant a warrant against the putative father for the purpose of enforcing payment under the order, was not suspended by an appeal to the quarter sessions by the putative father against the order, and the confirmation of the order by the sessions subject to a special case. Lord Suspension of execution by appeal.

(m) *R. v. JJ. Staffordsh.*, 12 East, 572. Mr. C. Manley Smith in his *Treatise on the Law of Master and Servant*, p. 307, n. (x), says, that since 11 & 12 Vict. c. 43, s. 14, it would seem that the conviction can no longer form part of the commitment.

(n) See 14 Geo. 3, c. 25; 17 Geo. 3, c. 56, s. 20; 17 Geo. 3, c. 54, s.

20; and *R. v. JJ. West Riding of Yorksh.*, 7 B. & C. 678.

(o) Per Lord Campbell, C. J., in *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J., M. C. 89, 92; 1 Jur., N. S. 538, S. C.; see also *Ex parte Willmott*, 1 El. B. & S. 27; 30 L. J., M. C. 161; and *Re Blues*, 5 El. & Bl. 291; 1 Jur., N. S. 541.

*Campbell*, C. J., in the course of delivering his judgment, said, "There is no universal juridical maxim or rule that an appeal or writ of error is a stay of execution pending the appeal or writ of error. In our Courts of Equity an appeal is no stay of execution without a special order for that purpose, as has been lately authoritatively declared in the case of *Hope v. Hope* (*p*), by the present Lord Chancellor, for the information of the tribunals of France. According to the common law of England a writ of error, even when allowed and returnable, is no supersedeas of execution in criminal cases, where there has been sentence and imprisonment. If the party convicted was in prison under his sentence when the writ of error was sued, he continued in prison pending the writ of error; and if he was not, he might still be taken and imprisoned pending the writ of error. . . . In the *King v. Brooke* (2 T. R. 196), this Court intimated an opinion that a commitment under the Vagrant Act was lawful pending an appeal given by the statute against the conviction. *Buller*, J., observes, 'It is said that it is strange that the party should suffer the punishment while the appeal is pending, but we are to consider it like a case of a writ of error, which does not suspend the execution of a judgment which it is brought to reverse.' The common law upon the subject is illustrated by Lord Lyndhurst's Act, 16 & 17 Vict. c. 32, for allowing, on certain conditions, a stay of execution of judgment for misdemeanors after a writ of error (*q*). From the 27th section of the stat. 11 & 12 Vict. c. 43, it might be argued, that pending an appeal justices are not at liberty to grant a warrant in execution, as they are thereby expressly authorized to grant the warrant after the appeal is determined; but section 35 enacts that the act shall not extend to any complaints, orders or warrants in matters of bastardy made against the putative father of

(*p*) 23 L. J., Chan. 682.

(*q*) See, under 8 & 9 Vict. c. 68,

*Dugdale v. The Queen*, 24 L. J. (N. S.) M. C. 55.

any bastard child, with certain exceptions, which do not include the warrant in question" (r).

By the 27th section of 11 & 12 Vict. c. 43, it is enacted, that if the appeal is decided in favour of the respondent, the justices making the conviction may issue their warrant of distress, &c., as if no appeal had been brought; but this enactment applies only to cases where execution has not issued before the appeal (s).

## SECT. 2.—Of Notice, Recognizance, &c.

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When an appeal is allowed by statute it is usually upon certain conditions, viz., that a notice be given to the magistrate whose act is appealed from, or the prosecutor or both, and that a recognizance (t) be entered into to prosecute the appeal and pay the costs.

Where the statute does not provide for a notice being Notice. given, still an intimation should be given to the other side that there is an intention to appeal; and even where the statute provides for a recognizance, which may be contended to be a kind of notice, the appellant should give notice (u). And this notice should, it seems, be given both to the justices and persons instituting the proceedings (u).

(r) See *post*, "Certiorari," as to the suspension of the issuing of a writ of *certiorari* by appeal and admitting to bail after the issuing of a writ of *certiorari*.

(s) *Ex parte Willmott*, 1 El. B. & S. 27; 30 L. J., M. C. 161, in which case the warrant of commitment had issued (under 39 & 40 Geo. 3, c. 89) before the recognizance on appeal had been entered into, and the Court

held that execution was not suspended by the appeal.

(t) See the form, Appendix. When notice is a condition precedent to the right of appeal, see *R. v. JJ. Lancaster*, 8 El. & Bl. 563; 27 L. J., M. C. 161.

(u) Judgment of Campbell, C. J., in *Ex parte Blues*, 5 El. & Bl. 291; 24 L. J., M. C. 138.

Convictions  
not within  
12 & 13 Vict.  
c. 45, so far as  
regards notice  
of appeal.

Before discussing the requisites of the notice, it would be well to observe that notices of appeal against summary convictions, orders of removal, orders under any statute relating to pauper lunatics, orders in bastardy, and against proceedings under the statutes relating to the excise, customs, stamps, taxes and post-office, are expressly excepted from the operation of the first section of the General and Quarter Sessions Procedure Act (12 & 13 Vict. c. 45), which establishes in all other cases a uniform period (fourteen days) for notice of appeal, and requires it to be in writing and signed by the party or his attorney, and to specify the grounds of appeal (*y*).

When to be  
given.  
"Reasonable  
notice."

Where a statute enacts that the party aggrieved may appeal, "giving reasonable notice to the prosecutor," &c., this has no reference to the precise description of notice, as respects the form, but regards rather the substance,—as being reasonable in point of time, or number of days before the sessions. Unless the act of parliament, therefore, specifies the form and manner in which the notice is to be given,—as by directing that it shall be in writing, which some of these penal statutes do,—a parol notice may be given (*z*).

"Clear days."

If a statute requires that ten *clear* days' notice of the intention to appeal shall be given, the ten days are to be taken exclusively both of the day of serving the notice and the day of holding the sessions (*a*).

"At least."

The same mode of computation is to be adopted if the notice is to be given a certain number of days *at least* before the sessions (*b*). In other cases, one day is reckoned exclusive and the other inclusive.

(*y*) See sects. 1 and 2. The notice may be signed on behalf of a corporation by their attorney, although he has not been appointed under their common seal; *Faviell v. Eastern Counties Railway Company*, 2 Exch. 344; 17 L. J., Exch. 223, S. C.

(*z*) *R. v. JJ. Surrey*, 5 B. & Ald. 539; 1 D. & R. 160; 1 D. & R. Mag.

Ca. 64; *S. P. R. v. JJ. Salop*, 4 B. & Ald. 626; *R. v. JJ. Huntingdonsh.*, 19 L. J., M. C. 127.

(*a*) *R. v. JJ. Herefordsh.* 3 B. & Ald. 581, *ante*, p. 53.

(*b*) *R. v. JJ. Shropsh.*, 8 A. & E. 173; and see *Mitchell v. Foster*, 12 Id. 472; *Chambers v. Smith*, 12 M. & W. 2; *Zouch v. Empey*, 4 B. &



If the notice is to be given "fourteen days before the first day of the sessions," it should be fourteen days before the first day of the general quarter sessions, and not fourteen days before the first day on which the adjourned sessions are appointed to be held for the division in which the appeal is to be tried (c). "First day of sessions."

Where the appeal was given to the party convicted "on giving *immediate* notice of such appeal," and he did not give notice of appeal until seven days after the date of the conviction, the Court said, that although the word "immediate" might not be construed so strictly as to require the notice to be given forthwith on conviction, yet that this was not such a prompt compliance with the terms of the statute as to justify the sessions in entertaining the appeal (d). "Immediate."

"*Forthwith*" means without such delay as cannot be satisfactorily accounted for (e). "Forthwith."

Where a statute reserved a right of appeal upon giving notice "within six days after the cause of the complaint arose," and a warrant of distress was signed and granted by two justices on the 4th of December, which was not executed until the 12th of December,—it was held sufficient, that the party gave notice of appeal within six days after the *execution* of the warrant, the time when he was actually damnified, and that it was not necessary that notice should have been given within six days after the date of the warrant (f). "After cause of complaint arose." "Sunday."

Ald. 522; a fraction of a day cannot be considered, so as to render the service of the notice good. *R. v. JJ. Middlesex*, 3 D. & L. 109; 14 L. J., M. C. 139.

(c) *R. v. JJ. Suffolk*, 4 D. & L. 628; 16 L. J., M. C. 36, S. C.

(d) *R. v. JJ. Huntingdonsh.*, 5 D. & R. 588; 2 D. & R. Mag. Ca. 594; see *Re Blues*, 5 E. & B. 291; 1 Jur., N. S. 541; *Page v. Pearce*, 8 M. & W. 677; *Grace v. Clinch*, 4 Q. B. 606; *R. v. Aston*, 1 L. M. &

P. 491; 19 L. J., M. C. 236; 14 Jur. 1045, S. C.; *ante*, p. 53.

(e) Per Coleridge, J., *Ex parte Lowe*, 3 D. & L. 737; and see *R. v. JJ. Ely*, 5 El. & Bl. 489; 1 Jur., N. S. 1019; 12 A. & E. 672; 3 B. & C. 658; 8 M. & W. 281; *R. v. Aston*, 1 L. M. & P. 491.

(f) *R. v. JJ. Devon*, 1 M. & S. 411; see *Prosser v. Hyde*, 1 T. R. 414, where the words were "after judgment;" *ante*, p. 54; and *post*, p. 362. The fourteen days for giving

last of the six days fell on a Sunday and notice was given on the Monday, it was held to be too late (*g*); but Sunday is to be excluded in computing the twenty-four hours within which the putative father must give notice of appeal against an order of affiliation under 7 & 8 Vict. c. 101, s. 4 (*h*).

By whom to  
be given.

The person to whom the appeal is given by the particular statute is, of course, the person to give notice of the appeal. If there is a joint grievance to several appellants, they may join in their notice (*i*); and even when three persons had been jointly summoned for unlawful fishing; and, after a joint hearing, had been convicted in separate sums for each defendant, a joint notice of appeal given by them as against a conviction "of us," &c., naming the three, was held to be sufficient, as it could not mislead the justices, although the defendants entered severally into recognizances by separate instruments, and although three several convictions, one of each defendant, were afterwards returned to the sessions (*i*). If the appeal be given to a public body, such as parish officers, the act of the majority in giving the notice is binding (*k*); and, unless the words of the statute preclude it, the notice may be given by attorney (*l*). The statute, however, must always be looked to, and its provisions accurately followed.

To whom to  
be given.

The statute generally points out to whom the notice is to be given; but if it be silent, it would appear that

notice of appeal against an assessment under the Nuisances Removal Act, 1855, run from the service of notice of the assessment, not from the time when the amount was fixed by the local authority; *R. v. Middleton*, 1 El. & El. 98; 28 L. J., M. C. 41.

(*g*) *R. v. JJ. Middlesex*, 2 Dowl., N. S. 719, in which it was assumed that the cause of complaint arose when the conviction was made. See

*Wynne v. Ronaldson*, 13 W. R. 899. See also *post*, p. 353, as to serving notice of appeal on a Sunday.

(*h*) *R. v. JJ. Middlesex*, 5 D. & L. 580; 17 L. J., M. C. 111, S. C.; see *R. v. JJ. Huntingdonsh.*, Cald. 283.

(*i*) *R. v. JJ. Oxfordsh.*, 4 Q. B. 177.

(*k*) *Withnall v. Gartham*, 6 T. R. 398.

(*l*) See *R. v. JJ. Middlesex*, 20 L. J., M. C. 42.

notice should be given to the justices and to the persons initiating the proceedings (*n*).

Where two justices have made the conviction, notice of appeal must be given to each (*o*); and this has been held, even where the conviction had in fact been signed by only one of the justices at the time of the giving the notice (*p*). It might, however, be different if it should appear that the conviction had been communicated to the appellant before he gave the notice, so that he might have been misled by the conviction (*q*); and where notice is to be given to a collective body of persons, such as overseers, service on one is sufficient (*r*).

Service of notice.

On whom.

Unless the statute expressly require the notice to be in writing, it may be verbal (*s*). As the object of a notice is to inform the respondents that some particular conviction is to be appealed against, care should be taken that they cannot be misled on this subject; and therefore the names of the appellants, the intention to appeal, the sessions to which the appeal is to be made, the sessions at which and the justices before whom the conviction took place, as well as the nature of the conviction itself, should be contained in the notice, and it would also be advisable to direct it to the proposed respondents. Notices, however, will not be critically construed, and if they substantially give the respondents the requisite information, they will (apart from statutory provision) be held sufficient (*t*). Thus where the notice stated an intention to

Form of notice.

(*n*) *Ex parte Blues*, 5 E. & B. 291; 24 L. J., M. C. 138.

(*o*) *R. v. JJ. Bedfordsh.*, 11 A. & E. 134; 3 P. & D. 23, S. C.: service on the attorney of the magistrate is bad; *R. v. Kimbolton*, 6 A. & E. 603.

(*p*) *R. v. JJ. Chesh.*, 11 A. & E. 129; 3 P. & D. 23, S. C.: service on the attorney of the magistrate is bad; *R. v. Kimbolton*, 6 A. & E. 603.

(*q*) Service on one of several part-owners of a vessel, of notice of appeal against a conviction for injur-

ing the vessel, is sufficient, *R. v. Recorder of Liverpool*, 31 L. J., M. C. 127.

(*r*) *R. v. JJ. Warwicksh.*, 6 A. & E. 873.

(*s*) *R. v. JJ. Salop*, 4 B. & Ald. 626; *R. v. JJ. Surrey*, 5 Id. 539; *R. v. JJ. Lincolnsh.*, 3 B. & C. 548; *R. v. JJ. Huntingdonsh.*, 19 L. J., M. C. 127.

(*t*) *R. v. JJ. Denbighsh.*, 9 Dowl. P. C. 509; *R. v. JJ. Oxfordsh.*, 4 Q. B. 177; *R. v. West Houghton*, 5 Q. B. 300.

appeal to the borough sessions (the appeal properly being to the county sessions), it was held that these words might be rejected as surplusage, if they did not mislead (*u*); though, if acted upon, then the notice could not be taken as good for the county sessions afterwards (*x*). The grounds need not be stated unless the statute requires it (*y*); this, however, is sometimes required. And where a statute, as the Vagrant Act (5 Geo. 4, c. 83, s. 14), required a party to give notice in writing of his appeal, and of the ground thereof; and he gave notice of appeal, stating as a ground that he was not guilty of the offence; this was held to be a sufficient notice, as it meant that all the ingredients of the offence were disputed (*z*). But where in a bastardy appeal, under the old statute 49 Geo. 3, c. 68, the notice contained a mere statement of an intention to appeal against an order whereby the appellant was adjudged father of the child, this notice was held bad (*a*); and in an appeal against overseers' accounts, a notice was held bad which neglected to state the grounds, though it specified particular items (*b*).

All the statutory provisions must be accurately fulfilled, so that where a statute gives an appeal to a person by any particular description the notice should bring the appellant within it: thus, where a statute gives a right of appeal to a *party aggrieved*, on giving notice in writing, the notice should state that the party appealing is *aggrieved* by the conviction (*c*).

(*u*) *R. v. JJ. Buckinghamsh.*, 4 El. & Bl. 259; 24 L. J., M. C. 15; *R. v. Recorder of Liverpool*, 15 Q. B. 1070.

(*x*) *R. v. JJ. Salop*, 4 El. & Bl. 257; 24 L. J., M. C. 14.

(*y*) *R. v. Westmoreland*, 10 B. & C. 226; *R. v. Derby*, 20 L. J., M. C. 44.

(*z*) *R. v. JJ. Newcastle-upon-Tyne*, 1 B. & Adol. 933. As to the grounds of appeal, see *post*, "Grounds of Appeal," p. 372.

(*a*) *R. v. JJ. Oxfordsh.*, 1 B. & C.

279.

(*b*) *R. v. Sheard*, 2 B. & C. 856.

(*c*) *R. v. JJ. West Riding of Yorksh.*, 7 B. & C. 678; *R. v. Blackawton*, 10 B. & C. 792; *R. v. JJ. Essex*, 5 B. & C. 431; 7 D. & R. 658; 3 D. & R. Mag. Ca. 483, S. C. A local act gave a right of appeal to any person thinking himself aggrieved by any order of the commissioners appointed by it. It was held that a person, who had been present at a meeting, and concurred in a resolution upon which the order

The service, unless otherwise required by statute, may be made by the appellant's attorney (*d*), and some statutes allow the notice to be sent through the post (*e*); in which case, the notice is deemed to have been given on the day on which it would be received in the ordinary course of the post (*f*).

Service of notice of appeal against a conviction under the Highway Act (5 & 6 Will. 4, c. 50), by leaving it at the dwelling-house of the respondent, was held to be sufficient (*g*), and, it seems, it would be so in all cases where the statute under which it is given does not expressly require a different service.

It is a question not free from doubt whether a notice of appeal can be served upon a Sunday (*h*), although, as we have seen, when the last day for giving notice fell on a Sunday, it was held too late to give the notice upon the Monday (*i*). However this may be, if a statute allows it to be sent by post, its arrival on a Sunday does not invalidate the service (*k*).

And it may be observed, that notice of claim to be put on the register of voters under 6 Vict. c. 18, which requires it to be given on or before the 20th of July, may legally be given on a Sunday, when that day falls on the 20th of July (*l*).

appealed against was founded, could not appeal; *Harrop v. Bayley*, 6 El. & Bl. 218; 25 L. J., M. C. 107.

(*d*) *R. v. JJ. Middlesex*, 1 L. M. & P. 621; 20 L. J., M. C. 42; see 12 & 13 Vict. c. 45.

(*e*) 8 Vict. c. 10, s. 3; 14 & 15 Vict. c. 105, s. 10; 16 & 17 Vict. c. 97, s. 110; and see *R. v. Slawstone*, 21 L. J., M. C. 145; *R. v. Recorder of Richmond*, 1 El. Bl. & El. 253; 27 L. J., M. C. 197. Notice of grounds of appeal under 4 & 5 Will. 4, c. 76, is sufficiently given, if it is signed by the majority of the officers having the management of the poor of the parish, and is served on one of the officers of the other parish; *R. v. JJ. Warwicksh.*, 6 A. & E. 873.

(*f*) *R. v. Richmond*, 1 El. Bl. & El. 253; 27 L. J., M. C. 197; *R. v. Slawstone*, 18 Q. B. 388.

(*g*) *R. v. JJ. North Riding of Yorksh.*, 7 Q. B. 154; 14 L. J., M. C. 92, S. C.; and see *R. v. JJ. Chesh.*, 11 A. & E. 139; 15 L. J., M. C. 114; *R. v. Pocock*, *Id.* 132; and *ante*, p. 86.

(*h*) See *R. v. Leominster*, 2 B. & S. 391; 31 L. J., M. C. 95; and cases therein cited.

(*i*) *Ante*, p. 350; *R. v. JJ. Middlesex*, 2 Dowl. N. S. 71<sup>o</sup>; see *Asprell v. JJ. Lancash.*, 16 Jur. 1067, (Q. B.) n.; *Peacock v. The Queen*, 4 C. B., N. S. 264; 27 L. J., C. P. 224; and *Wynne v. Ronaldson*, 13 W. R. 899.

(*k*) *R. v. Leominster*, *supra*.

(*l*) *Rawlins v. Overseers of West*

Under a clause, directing the convicting magistrate to apprise the party of his right to appeal, it has been held, that the magistrate is bound to inform him, not only of his right to appeal generally, but of the necessary steps to be taken by him in pursuance of that right. Thus, where an appeal was given by statute (17 Geo. 3, c. 56), on giving notice *in writing* of the party's intention so to do, and entering into a recognizance; and, by the same statute, the justices were required to make known to such person, at the time of conviction, his right to appeal; but the justices, having informed a party of his right, said nothing about the notice;—the sessions, it was held, were bound to receive the appeal, although no notice in writing had been given<sup>(m)</sup>. But in another case under this statute, where it appeared from the return to a *mandamus*, that the justices had, in fact, made known to the defendant his right to appeal, whereupon he waived any intention of appealing, by replying to them, that he thought he had better pay the penalty; the Court held, that the justices need not have gone on to inform him of the necessary steps to be taken in order to appeal. And Lord *Ellenborough*, C. J., said, “How could it be necessary for the convicting magistrates to proceed, after the party had signified to them that he did not mean to appeal? The argument is founded upon a supposed necessity of engrafting the observance of all the provisions of the statute,—as they apply to another state of things, as was the case in *R. v. JJ. Leeds*,—into this case, where the same reason for their observance does not exist. All that the statute positively requires is, that the justices shall make known to the person convicted his right to appeal: they did so; and if he had thereupon gone on to signify his intention to appeal, *non liquet*, that they would not also have proceeded to make known to

*Derby*, 2 C. B. 72; and see *Palmer* 266; *R. v. JJ. Middlesex*, 5 D. & L. v. *Allen*, 6 C. B. 51; 18 L. J., C. P. 580.

(m) *R. v. JJ. Leeds*, 4 T. R. 583.

him the further steps that were to be taken by him; but why should they do so nugatory an act, as to inform him what he must do to appeal, and to enforce his right, after he had declined appealing and had waived his right (n)? And if the giving notice be prevented by the act of God, as by the death of the person to whom it was to be given, notice will be dispensed with (o). Dispensing with notice.

Sometimes it may be advisable, where the power exists, to give a cross notice of appeal. Thus where on an information, containing four counts, for offences against the excise laws under 7 & 8 Geo. 4, c. 53, the justices convicted on the fourth and acquitted on the other counts, and the defendant gave notice of appeal from the judgment to the quarter sessions, but the officer prosecuting for the Crown gave no notice of appeal against the judgment of acquittal; it was held that the defendant's notice was limited to the judgment on the fourth count, and that as on the hearing the Court of Quarter Sessions was of opinion that that count was not sustained by the evidence adduced, but the second count was, the judgment must be altogether for the defendant (p). Cross notice of appeal.

Where, after due notice is given, the appeal is respited to the following sessions, fresh notice of appeal is not necessary (q). But after the appeal is respited, if the appellant does not give the usual notice of trial required by the sessions, the sessions will be authorized in dismissing it altogether; for the party is bound to conform to the practice of the sessions (r). Where, however, an appeal was respited until the following sessions, in consequence Respite.

(n) *R. v. JJ. West Riding of Yorksh.*, 3 M. & S. 493.

(o) *R. v. JJ. Leicestersh.*, 15 Q. B. 88.

(p) *R. v. Gamble*, 16 M. & W. 384. The 82nd section of 7 & 8 Geo. 4, c. 53, enables the prosecutor, as well as the defendant, to appeal. See *R. v. Woodrow*, 15 M. & W. 404, as to the giving and signing the notice of appeal by the excise

officer.

(q) *R. v. Lambeth*, 3 D. & R. 340; 2 D. & R. Mag. Ca. 26. If a second notice is given differing from the first, it is bad; *R. v. Eyre*, 7 El. & Bl. 609; 26 L. J., M. C. 125. As to entering and respiting appeal, see *Id.* and *S. C.* pp. 14, 121, and *R. v. JJ. West Riding*, El. Bl. & El. 713; 27 L. J., M. C. 269.

(r) *R. v. JJ. Salop*, 2 B. & A. 694.

of an equal division of opinion on the bench, it was held that no fresh notice of trial was necessary (*s*); nor is it required where the appeal is adjourned at the instance and for the accommodation of the respondents (*t*). Where full notice of an appeal has been given, and there is no countermand of the notice, the sessions are justified in refusing to respite the appeal on the ground of the absence of a witness, unless the appellant pay the costs of the day (*u*).

Where the respondent was dead at the time the notice of appeal was sent, it was held that the sessions should nevertheless hear the appeal (*x*).

Fresh notice.

If the time for giving notice be not passed, the appellant may abandon his first notice and give another (*y*).

Costs if abandoned appeal frivolous.

If the appeal be frivolous, though not prosecuted, the Quarter Sessions may award costs (*z*).

Recognizances.

The entering into a recognizance for the payment of costs and for the due prosecution of the appeal is, as we have seen, generally a condition precedent to the right of being heard at sessions (*a*), and formerly the invalidity of the recognizance prevented the exercise of such right, although it was drawn up and enrolled by the justice, and the appellant had no control over it (*b*). This hardship is now in a great measure prevented by the General Quarter Sessions Procedure Act (12 & 13 Vict. c. 45, s. 8), which empowers

(*s*) *R. v. JJ. Buckinghamsh.*, 6 D. & R. 142; 3 D. & R. Mag. C. 23.

(*t*) *R. v. Lindsey*, 6 M. & S. 379.

(*u*) *R. v. JJ. Monmouthsh.*, 1 B. & Adol. 895.

(*x*) *R. v. JJ. Leicestersh.*, 15 Q. B. 88.

(*y*) *R. v. JJ. West Riding of Yorksh.*, 3 T. R. 778.

(*z*) 12 & 13 Vict. c. 45, s. 6.

(*a*) Under 7 & 8 Vict. c. 101, s. 4, amended by 8 Vict. c. 10, s. 3, the appellant is required, within seven days after the adjudication and making of an order in bastardy, to give sufficient security, by recognizance or otherwise, and forthwith to

give or send a notice in writing of his having entered into the recognizance to the woman, and also to one of the justices who made the order, unless such justice is one of those before whom he entered into the recognizance.

(*b*) The recognizance, when made up, must be subscribed with the name of the justice who took it, and it must also be enrolled, because until then it is not a perfect record. *Hall v. Wingfield*, Hob. 195, 196; *Id.* 248; Vin. Ab. Recog. H.; Dalton, c. 168; *Glynn v. Thorpe*, 1 B. & A. 153.



the Court before which the appeal is brought, in cases where the recognizance has been entered into within the time by law required, but is in any way invalid, to allow the substitution of a new and sufficient recognizance, and for that purpose to allow such time and make such examination and impose such terms as to payment of costs to the respondent as shall appear just and reasonable. The decision of the sessions upon this point is to be final, and not liable to be reviewed in any Court by *certiorari*, *mandamus* or otherwise(*c*). By this act, after notice of appeal has been given against certain proceedings, a special case may be stated, by consent or by order of a judge, for the opinion of a superior Court, without previously going to the sessions(*d*), and it is expressly enacted that no recognizances for the prosecution and trial of any appeal shall be deemed to be thereby forfeited(*e*).

Where a party, against whom an order of affiliation had been made, applied to a justice, stating that he had given notice of appeal and required the justice to take his recognizance to appear and try the appeal and to pay costs, if awarded, it was held that the justice had no jurisdiction to decide whether the notice of appeal was sufficient, that being a question for the sessions on hearing the appeal(*f*).

Some statutes provide, that instead of recognizances being entered into, a deposit may be made. Thus by 24 & 25 Vict. c. 96, s. 110, and 24 & 25 Vict. c. 97, s. 68, it is provided, that where the conviction is only for a penalty or sum of money the appellant (instead of entering into a recognizance with two sureties) may de-

(*c*) Sect. 9, and see 3 Geo. 4, c. 46, s. 4.

(*d*) Sect. 11, see Appendix.

(*e*) Sect. 16.

(*f*) *Re Carter*, 24 L. J., M. C. 72. Where the appeal was dismissed with costs at the October sessions, which were adjourned to the 14th November, and the costs

were taxed between the 18th October and the 14th November and the recognizances were estreated at the January sessions, on proof of demand and nonpayment; it was held that there was jurisdiction thus to estreat them under 3 Geo. 4, c. 46, s. 2. *R. v. JJ. Ely*, 5 El. & Bl. 489; 1 Jur., N. S. 1017.

posit with the clerk of the convicting justice such sum of money as such justice shall deem sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of appeal.

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SECT. 3.—*Place and Time of Appeal—The Hearing, Costs, &c.*

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As to place.

The appeal is almost invariably given to the quarter sessions, but in some few cases appeals have been given to the general sessions, in which case, if there be a general sessions before the quarter sessions, the appeal must be to them(*g*); if, however, the quarter sessions come first the appeal would be to them, as every quarter sessions is a general sessions. But as every general sessions is not a quarter sessions, if the appeal be to quarter sessions it cannot be preferred at a general one(*h*). "General quarter sessions," and "general or quarter sessions," mean the quarter sessions(*i*). The appeal in most cases will be to the county sessions; but an appeal from a conviction by magistrates of a particular franchise having a general sessions of its own must be to the sessions held for that franchise, and not to the general sessions for the county(*k*), unless, indeed, the statutory enactments provide other-

(*g*) *R. v. Shaw*, 2 Salk. 482;  
Lord Denman in *R. v. JJ. Middlesex*, 4 Q. B. 810.

(*h*) *R. v. Turnock*, 2 Salk. 474;  
*R. v. Turner*, 5 Mod. 329.

(*i*) *R. v. JJ. Surdon*, 15 East, 632;  
*R. v. JJ. Middlesex*, 6 Q. B. 807.

(*k*) Case of *South Molton*, Skin.  
122.

wise, as in the case of the refusal of an ale licence by borough justices, when the appeal is to the county sessions; though under the Municipal Corporation Act the borough may have a quarter sessions of its own (*l*).

If no limits are fixed by the act for the *time* within which an appeal must be brought, it is nevertheless understood that it must be within a reasonable time (*m*). As to time.

The appeal is most frequently limited to the *next* sessions after the conviction, or to the sessions which shall be held next after so many days or months (*n*) from the conviction. "Next sessions."

Where it is required that the appeal shall be brought at the *next* sessions after the conviction, it means the next *practicable* sessions (*o*).

Where a statute, as the Pilot Act, 52 Geo. 3, c. 39 (*p*), declared that a party might within three calendar months after the conviction appeal to the sessions, first giving ten days' notice of such appeal to the other party, the party convicted had three calendar months within which to give notice of his intention to appeal to the then following sessions, although those sessions were held more than three calendar months after the conviction; and it was not necessary for him to appeal to the next immediate sessions after the conviction (*q*).

(*l*) *R. v. Deane*, 2 Q. B. 95; *R. v. Cockburn*, 4 E. & B. 265; *R. v. Recorder of Bristol*, 4 El. & Bl. 265; 24 L. J., M. C. 43. In like manner the appeal is to the county sessions against order adjudging settlement of pauper lunatics confined in borough asylum. *R. v. JJ. Warwicksh.*, 28 L. J., M. C. 249.

(*m*) Per Lord Ellenborough, *R. v. JJ. Oxfordsh.*, 1 M. & S. 448; see *R. v. JJ. Gloucestersh.*, 3 M. & S. 127; *R. v. JJ. Herts*, 3 *Id.* 459.

(*n*) That is "calendar" months, unless words be added showing lunar months to be intended, 13 & 14 Vict. c. 21.

(*o*) *R. v. JJ. Essex*, 1 B. & A. 210; see *R. v. JJ. Southampton*, 6

M. & S. 394; *R. v. Hendon*, 2 D. & R. 249; 1 D. & R. Mag. Ca. 245; *R. v. JJ. Sussex*, 15 East, 206; *R. v. Thackwell*, 6 D. & R. 61; 3 D. & R. Mag. Ca. 121; 4 B. & C. 62; *R. v. JJ. Lancash.*, 19 L. J., M. C. 199; *R. v. JJ. Surrey*, 3 D. & L. 343; 15 L. J., M. C. 1; *Bowman v. Blyth*, 8 El. & Bl. 7; 27 L. J., M. C. 21; *R. v. Sevenoaks*, 7 Q. B. 136; 14 L. J., M. C. 93; *R. v. JJ. West Riding*, El. Bl. & El. 713; 27 L. J., M. C. 269; *R. v. Peterborough*, 7 E. & B. 643; 26 L. J., M. C. 153.

(*p*) Repealed by 6 Geo. 4, c. 125, s. 1.

(*q*) *R. v. JJ. Middlesex*, 6 M. & S. 279; see *R. v. JJ. Yorksh.*, 3 T. R. 779.

“After judgment.”

Where a statute provides, that a party, finding himself aggrieved by the *judgment*, may appeal to the next quarter sessions, this is construed to mean the sessions next after the conviction, and not the sessions after the execution or levying the penalty. Thus, a party had been convicted on the 24 Geo. 3, c. 31(*q*), for not entering horses liable to duty. The appeal clause enacts, “that if any person shall find himself aggrieved by the *judgment* of any justice, he may, upon giving security, &c., appeal to the justices of the peace at the next general quarter sessions for the county, &c., who are finally to hear and determine.” The conviction was on the 23rd of June; the sessions next following were the 27th of June. On the 23rd of July the defendant’s goods were seized and sold for the penalty; and, on the 25th of July, he gave notice of his intention to appeal, and offered a recognizance, which the magistrate refused to take:—In an action against the magistrate for such refusal, and also for neglecting to return the conviction, the question was, whether at the time of giving notice and applying to enter into a recognizance, the party was in time to appeal. The Court were clearly of opinion that he was too late, the first sessions after the conviction having been suffered to pass before he gave notice of appealing. *Ashhurst, J.*: “The words of the act are decisive, for it says, ‘if any person shall find himself aggrieved by the *judgment* of any such justice, &c. he may appeal to the justices at the *next* general quarter sessions.’ Therefore, the plaintiff should have appealed to the sessions next after the *judgment*.” *Buller, B.*: “The cases relative to appeals against orders of removal are very distinguishable from the present. All orders of removal are *ex parte* proceedings, and the other party cannot know anything of them till the actual *removal*; but this conviction is more like a judgment of this Court than an order of removal. The grievance to

the party is the *judgment*, and not the *execution*. A writ of error will lie before execution, and an appeal is in the nature of a writ of error: it complains of the judgment. If a contrary construction prevailed, it would be such a snare to the magistrates that they would never be safe; for the justices do not issue their warrants of execution till they know whether an appeal will be brought or not; and they could never know when the party found himself aggrieved, if he were not to appeal to the next sessions after the conviction (*r*).

So under 7 & 8 Vict. c. 101, s. 4(*s*), which requires notice of appeal to be given "within twenty-four hours after the adjudication and making any order on the putative father," the time must be calculated from the verbal adjudication at petty sessions, and not from the time when the formal order is drawn up and signed (*t*).

A statute required ten days' notice of appeal to be given "within six days after order, judgment or determination made or given." The justices, on the 23rd of April, after hearing evidence and examining the surveyor of highways, expressed their determination to make an order on him as such surveyor to pay a sum of money to the trustees of a turnpike road (under 4 & 5 Vict. c. 59), and a form of an order, in writing, was then and there signed by them in blank, the blanks being afterwards filled up by the clerk in conformity with their verbally expressed decision, but no copy of the order was served upon the surveyor for six weeks afterwards. The order was held to have been made on the 23rd of April, and notice given more than six days after the 23rd was too late (*u*).

In a case which occurred under the former General After cause of complaint.

(*r*) *Prosser v. Hyde*, 1 T. R. 414; and see *R. v. JJ. Pembroke-sh.*, 2 East, 213; *R. v. JJ. Stafford-sh.*, 3 *Id.* 151; *R. v. JJ. Derbysh.*, 7 Q. B. 193.

(*s*) Amended by 8 Vict. c. 10.

(*t*) *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193, overruling

*R. v. JJ. Flintsh.*, 15 L. J., M. C. 50; 2 New Sess. Ca. 236, S. C.; and see *R. v. JJ. Huntingdonsh.*, 1 L. M. & P. 78; 19 L. J., M. C. 127.

(*u*) *R. v. JJ. Derbysh.*, 7 Q. B. 193.

Highway Act, 13 Geo. 3, c. 78, s. 80, by which an appeal was given, upon giving notice "within six days after the cause of the complaint arose;" and the party assessed having refused to pay, a warrant of distress was signed and granted by two justices on the 4th of *December*, which was executed on the 12th; and the party thereupon gave notice of appeal, within six days after the 12th of *December*; but the sessions dismissed the appeal, being of opinion that notice ought to have been given within six days after the *date* of the warrant, and not the *execution* of it;—Lord *Ellenborough*, C. J., said, that the party appealing was to appeal within six days after he was actually damnified, and that it was not necessary he should appeal on the warrant; for *non liquet* that it would be proceeded upon (*x*).

In another case, also, where the *cause of complaint* admitted of two constructions, or was compounded of two separate acts, the last act done was held to be the cause of complaint, from the date of which the period limited for the appeal was to be reckoned. Thus, by a local act certain guardians and directors of the poor were authorized to contract debts and grant annuities; and it was provided, that any person aggrieved by anything done in pursuance of the act might appeal to the quarter sessions to be holden "within four calendar months next after the cause of complaint should have arisen." A rate-payer appealed to the sessions against an order of the guardians for the payment of sums due on annuities, and as interest on loans. The order had been made less than four months back, but the debts had not been incurred, nor the annuities granted within five months; and it was held, that the cause of complaint was the making the order for the payment of the interest and the annuities, and not the borrowing or granting the annuities (*y*).

Where the appeal is given to the next sessions, and

(*x*) *R. v. JJ. Devon*, 1 M. & S. 411; *ante*, p. 349.

(*y*) *R. v. JJ. Salop*, 2 B. & Ad. 145.

upon certain conditions, such as giving notice, entering into recognizance, or the like; in such case, if an appeal be lodged at the proper sessions, but dismissed for want of compliance with some of the prescribed forms, the right of appeal is gone, and cannot be renewed at any other sessions, although such other sessions are within the time limited by the act.

Dismissal of appeal for informality, conclusive.

Thus, a statute gave an appeal from a conviction by a justice to any quarter sessions to be holden within six months from such conviction, on condition that the appellant should give ten days' notice of his intention to appeal, and enter into a recognizance within four days after such notice. An appeal was lodged at the first sessions after the conviction; the sessions dismissed it, without entering into the merits, for want of proof that the recognizance was entered into within four days of the notice given. At the following sessions, and within the six months of the conviction, a second appeal was lodged, which the Court refused to hear. Upon a motion for a *mandamus* to compel the sessions to receive such second appeal, it was held, that the first judgment was conclusive, and that no second appeal could be brought against the same conviction (2); for it was held that, after the appeal was lodged, and adjudged by the justices at sessions to be informal, they were *functi officio*, and could not take cognizance of the second appeal. And Mr. J. Buller said, "The act certainly only gives a right of appealing *once*; and the parties, having had one appeal, are bound by that. If the question had rested solely on the *notice* of appeal for the first sessions which happened, and nothing further had been done, I should not have thought the parties bound by it; for the act gives the power of appealing within a certain time, with these two requisites, viz. that the appellant must give ten days' notice, and

(2) *R. v. JJ. West Riding of Yorksh.*, 3 T. R. 776, recognized *R. v. JJ. Middlesex*, 9 Dowl. P. C. 163.

The conviction was on a local act, 17 Geo. 3, c. 106.

within four days after enter into a recognizance. When the party, therefore, found out his mistake, he might have stopped there; but he persisted in going on with his appeal, and brought it before the Court, and took their judgment upon it. The appellate jurisdiction was therefore fully exercised; and, though it was originally in the option of the parties, whether they would appeal to the first or second sessions which took place within the six months, yet, having made their election to appeal to the first, they must abide by the judgment there given.”—Agreeably, therefore, to what is here laid down, the party who has given notice of appeal, but neglected to enter into the recognizance, may set himself right by giving a fresh notice of appeal, and entering into a recognizance to prosecute *that* appeal, provided it be to a sessions within the time limited. In accordance with the principle of the above case, it was decided under the old law (which allowed an appeal against the actual removal of a pauper, if there had not been a previous appeal against the order), on the one hand, that if the previous appeal was dismissed without hearing, because there were no grounds of appeal, the appellant might still appeal against the removal, as the previous proceedings were altogether abortive (*a*); but on the other, if the previous dismissal was on the ground that the original order was not produced, but only a copy, he might not, as this was going into the case and an adjudication on the evidence (*b*).

Second notice,  
where proper.

Appellant re-  
lying on objec-  
tion of form,  
concluded.

In appeals limited to the *next* sessions, where the appellant relies on an objection, independent of the merits, and procures an order of the sessions quashing the conviction on that ground, which order is afterwards set aside by the Court of Queen's Bench, and consequently the conviction set up again, the appellant cannot afterwards go to the

(*a*) *R. v. Macclesfield*, 13 Q. B. 128; *R. v. Peterborough*, 4 D. & L. 881. 512; 18 L. J., M. C. 79.

(*b*) *R. v. JJ. Sussex*, 9 Dowl. P. C.



sessions again to hear the appeal discussed upon the merits, by entering continuances from the first appeal(c).

Where, however, the sessions quash a conviction for matter of form only, subject to the opinion of the Court of Queen's Bench upon the validity of the objection, and it appears to the Court, when the conviction is returned by *certiorari*, that there is no defect of form, they will send the case back to be heard on the merits; for in such case the conviction must be only considered as quashed conditionally by the sessions, until the Court of Queen's Bench has determined whether the form of it is correct(d).

The sessions at which an appeal is properly lodged, and all due requisites complied with, being regularly possessed of the cause, may in general *adjourn* it to a subsequent sessions. This power is incident to the authority of the Court, and is not prevented by the words of the statute directing the justices at the *said* sessions to *determine* the matter(e).

If an appellant be surprised at the sessions by the production of a conviction different from the copy which had been delivered to him, he may apply for time, and the appeal should be adjourned(f). An adjournment may even take place after the hearing of the appeal has been partly proceeded with, but this should be only on special grounds(g). Indeed, strictly speaking, no adjournment

(c) *R. v. Allen*, 15 East, 346. See 3 T. R. 519; 4 T. R. 273.

(d) *R. v. Ridgway*, 5 B. & Ald. 527; 1 D. & R. 132; 1 D. & R. Mag. Ca. 38.

(e) *R. v. JJ. Wiltsh.*, 13 East, 352; *R. v. Inhabitants of Kimbolton*, 6 A. & E. 603; *R. v. Mainwaring*, 1 El. Bl. & El. 474; 27 L. J., M. C. 278, 280; *R. v. Kendal*, 1 E. & E. 492; 28 L. J., M. C. 110, commented upon by Crompton, J., in *R. v. Cambridge Union*, *infra*; *Ex parte Becke*, 3 B. & Ad. 704; *Keen v. The*

*Queen*, 10 Q. B. 928; *Bowman v. Blyth*, 8 El. & Bl. 7; 27 L. J., M. C. 21; *R. v. JJ. Lancaster*, 8 El. & El. 563; 27 L. J., M. C. 161. Sometimes the justices adjourn a case to take the opinion of the judges of assize thereon; see *R. v. Heddingham Sible*, Burr. Sett. Cas. 112, and *R. v. Cambridge Union*, 1 El. B. & S. 61; 30 L. J., M. C. 140.

(f) *R. v. Allen*, 15 East, 346; see 3 T. R. 519; 4 T. R. 273.

(g) *R. v. Cambridge Union*, 1 El. B. & S. 61; 30 L. J., M. C. 137.

should be allowed as of course, but only when the interests of justice require it(*h*).

The right of adjournment may be taken away by the express terms of a statute. Thus it has been held on the language of 9 Geo. 4, c. 61, that there was no power to adjourn to the next sessions an appeal against refusal of a licence(*i*), and on the language of 26 Geo. 2, c. 24, that there was no power to adjourn the consideration of the table of fees to be taken by the clerks of justices(*k*). And where the legislature directs an act to be done at a particular sessions, and at that sessions alone, no subsequent sessions has power to do it, and there is no authority in such case to adjourn its consideration or performance(*k*).

Adjournment  
only proper on  
regular appeal.

The sessions are to judge of the proper occasions for adjourning the hearing. But though the power of adjournment is inherent in the sessions, for their own convenience in hearing the appeal, or for any other good cause, as the absence of a witness, &c., that power can only be exercised on appeals regularly brought before them, that is to say, where all the conditions as to notice, &c., which are the acts of the party appealing, have been observed. A conviction on 16 Geo. 3, c. 30, made the 13<sup>th</sup> of July, was appealed against to the next *Michaelmas* sessions, and the party entered into a proper recognizance, but neglected to give any notice of appeal conformably to the appeal clause, which gave an appeal to the sessions next after twenty-one days from the conviction, "the appellant giving six days' notice," which last words were considered as imperative, and not merely directory. The justices at the first sessions adjourned the appeal, and, at the following sessions, it was dismissed, on the objection of want of notice. Upon a rule for a *mandamus* to the justices, to enter con-

(*h*) *R. v. Skincoat*, 28 L. J., M. C. 224. See where after adjournment it is allowable to deliver fresh grounds of appeal, *post*, p. 373.

(*i*) *R. v. Belton*, 11 Q. B. 37; 17 L. J., M. C. 70.

(*k*) *Bowman v. Blyth*, 7 E. & B. 26, 47; 26 L. J., M. C. 57.

tinuances and hear the appeal, it was held, that the want of notice was a decisive objection to the first appeal, and that the sessions had not even authority to adjourn it, on account of its never having been properly entered; for the Court said, the sessions, having no jurisdiction for want of notice, could not acquire to themselves a jurisdiction by an act of their own. The power of adjournment is only where the sessions cannot conveniently hear the appeal after it has been duly entered (*m*).

On the hearing of the appeal (*n*), the sessions can only The hearing.

(*m*) *R. v. JJ. Oxfordsh.*, 1 M. & S. 448.

(*n*) When the Court of Quarter Sessions is trying matters of a merely *civil* nature (see *ante*, p. 109), *quære* if it comes within sect. 103 of 17 & 18 Vict. c. 125 (the Common Law Procedure Act, 1854), as "a Court of Civil Judicature," and is therefore subject to the sections, from 19 to 32 inclusive, of that statute so far as they can be made applicable (see *Practice of Quarter Sessions*, by Leeming and Cross, p. 268). These sections refer to the power of adjournment, affirmation being made instead of oath, party discrediting his own witness, proof of contradictory statement by adverse witness, cross-examination as to previous statements in writing, proof of previous conviction of a witness, not calling attesting witness, comparison of disputed handwriting, stamping documents at the trial, and error on a special case.

This question is not so important to consider as it was, because now the following sections (3—8) of 28 Vict. c. 18, are declared by its first section to be applicable to "all courts of judicature, as well criminal as all others, and to all persons having by law or by consent of parties authority to hear, receive and examine evidence."

"Sect. 3. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge, prove adverse, contradict

him by other evidence, or by leave of the judge, prove that he has made, at other times, a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

"Sect. 4. If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

"Sect. 5. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be com-

Sessions can only notice conviction returned by justice.

take notice of the record of conviction returned by the magistrate. This was so held, though the conviction so filed differed, in the name of the informer, from the copy delivered to the appellant at the time of the conviction by the justice's clerk; the case was as follows:—

A conviction on 48 Geo. 3, c. 74, s. 13, having been appealed against, the magistrate returned to the sessions a record of conviction, signed and sealed the *5th June*, 1811, setting forth that the appellant on such a day was, on the complaint of Isaac Mann, convicted, &c. It appeared on the trial of the appeal, that, at the time of the conviction, an instrument, bearing the same date, was regularly signed and sealed by the magistrates, stating that the defendant, on the same day, was, on the complaint of W. Bourne and Isaac Ottley, convicted, &c. A copy of this latter instrument had been delivered by the justice's clerk to the defendant, written on the back of the information, which information thereby appeared to be that of Isaac Mann, and not of W. Bourne and I. Ottley, who were, in fact, the witnesses, and not the

petent for the judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he may think fit.

"Sect. 6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the Court, or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of 5s.

and no more shall be demanded or taken), shall upon proof of the identity of the person, be sufficient evidence of the said conviction without proof of the signature or official character of the person appearing to have signed the same.

"Sect. 7. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there was no attesting witness thereto.

"Sect. 8. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute."

informers. This copy was produced by the appellant at the sessions, but the Court refused to let it be filed. They, however, took notice of it as a memorandum or *minute* of the conviction, and ordered that which was returned on parchment by the magistrate and filed to be quashed, because of its variance from the above *minute*. This order of the sessions having been removed by *certiorari*, a rule was obtained for quashing it, which, in effect, was to set up again the conviction returned by the magistrates. Upon argument, that rule was made absolute, and the order of sessions quashed, the Court of Queen's Bench considering the conviction returned to the sessions by the magistrate as the only one of which the sessions could take notice, and that consequently they had done wrong in quashing it on account of the manifest mistake in the copy or memorandum produced by the appellant (*o*). It was said by the Court upon that occasion, that if the justice had done wrong in returning an improper conviction to the sessions, he would be punishable; but it clearly appeared, that the copy delivered to the appellant was drawn up in the form he received it by mere mistake; for it was drawn up on the back of the information of the very person who was the true informer. The Court moreover refused to send the case down again to be heard upon the merits; for the defendant, having chosen to rely upon the formal objection, was concluded by that election.

It seems to be an universally admitted rule, that, in every case of appeal to the sessions (*p*), both parties are at liberty to examine all competent witnesses on their behalf, without regard to whether they have been exa-

Fresh evidence may be given on hearing of appeal.

(*o*) *R. v. Allen*, 15 East, 333, 346, ante, p. 288, *et seq.*

(*p*) On the hearing of appeals at sessions, it sometimes becomes a question whether the Court can proceed unless the appellant is person-

ally present. There seems to be no general rule upon this subject, the question depending in a great measure upon the practice of each sessions respectively. In the case of an appeal against a conviction on

mined before or not. Until the decision in the case of *R. v. The Commissioners of Appeal in Matters of Excise* (q), however, it was considered doubtful whether this rule extended to appeals to the commissioners of appeals in matters of excise, against a conviction by the commissioners of excise; but, after solemn argument and deliberation in that case, the Court held (although the practice had been almost invariably otherwise since 12 Car. 2, c. 24), that the commissioners of appeal could not reject the testimony of witnesses tendered for the appellant, upon appeal to them, on the ground that such witnesses were not examined at the original hearing (r). Now, however, by 7 & 8 Geo. 4, c. 53, s. 84, amended by 4 & 5 Will. 4, c. 51, s. 24 (Excise), no witnesses are to be examined on an appeal in matters of excise except those who were examined before the justices, or tendered for examination and refused by them.

If the conviction or order has not been returned to the sessions, a *subpœna duces tecum* should be served upon the clerk to the justices by whom it was made; and, if the order or conviction has been served upon the respondent, it will be advisable also to give him a notice to produce it. The same course must be adopted with regard to other documents which the parties require to give in evidence at the hearing (s). Where a witness served with a *subpœna duces tecum* does not attend or attends and

the Stage Coach Act, 50 Geo. 3, c. 48, it was resolved, after argument, by the quarter sessions for the county of *Essex*, that the appellant must be present at the hearing of his appeal; *R. v. Cracklin*, *Mic.* 1822, *Ed.* The like practice seems to prevail at the *Middlesex* sessions, and the same reason, which requires that the appellant should be present, applies equally to the informer. If the appellant does not appear according to his notice and recognizance, the Court cannot hear the case (*R. v.*

*Stoke-Bliss*, 6 Q. B. 158; *R. v. JJ. West Riding of Yorksh.*, 5 *Id.* 1); but, under such circumstances, costs may be awarded to the respondent, 12 & 13 Vict. c. 45, s. 6.

(q) 3 M. & S. 133. But see *R. v. Jeffreys*, 1 B. & C. 604; 2 D. & R. 860; 1 D. & R. Mag. Ca. 455.

(r) See *R. v. Gamble*, 16 M. & W. 384, and 4 Vict. c. 20, s. 26, as to appealing in such cases to the Barons of the Exchequer.

(s) See *Barker v. Davis*, 34 L. J., M. C. 140.

refuses to produce the document (not on the ground of privilege), secondary evidence cannot be given of its contents, the only remedy being to punish the witness for a contempt (*s*).

Upon the hearing of appeals, the first step after the appeal is called on is, that the appellant should prove his notice, unless it be admitted. Where an appeal is called on and then adjourned to the next sessions on the application of the respondent's counsel, he may, nevertheless, require proof of due notice of appeal (*t*); but where there had been a due notice, of which (though not proved or admitted) a copy was handed by the respondent's counsel to the clerk of the peace in order to make out the order of respite which had been obtained, it was held that the respondent had so acted on the notice as to prevent him from calling for proof of it next sessions (*u*). The Court of Quarter Sessions would, however, be wrong to call for a notice of appeal to the sessions to which the case was adjourned, though they might call for the original one (*x*). The notice is the only instrument which brings the appeal before the quarter sessions, and, if required to be in writing, it should be accurately drawn; but, as has already been pointed out, where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that, as to time and number of days, it should be reasonable (*y*).

Sessions practice.

As soon as the notice of appeal has been proved or admitted the clerk of the peace proceeds to read the conviction which has been returned by the convicting justices. If any objections arise on the face of the conviction, the appellant usually begins; and, if he does so, he is bound

Formal objections to be stated at once.

(*s*) *R. v. Llanfaethly*, 2 El. & Bl. 940; see *R. v. Saffron Hill*, 1 Id. 93, and *Phelps v. Prew*, 3 El. & Bl. 430.

(*t*) *R. v. JJ. Middlesex*, 2 Dowl. N. S. 719; *R. v. JJ. West Riding of Yorksh.*, 5 B. & Ad. 667.

(*u*) *R. v. JJ. Hertfordsh.*, 4 B. &

Ad. 561; and remarks on it in *R. v. JJ. Middlesex*, *supra*.

(*x*) *R. v. JJ. West Riding of Yorksh.*, *supra*.

(*y*) *R. v. JJ. Surrey*, 5 B. & Ald. 539; *ante*, p. 348.

to state all his objections thereto at once, in order that they may be met on the other side; for it would be endless if each objection were to be discussed and decided *seriatim*. Objections which have been waived by appearance or otherwise at petty sessions cannot be taken at the quarter sessions (z) Should the objections to the form of the conviction be overruled, or none be taken, *in limine*, the respondent opens his case upon the merits, and calls his witnesses; and he is not confined, as we have just seen, to such witnesses as were examined below (a). If the Court thinks the case thus opened and proved requires an answer, the appellant then opens his case, and calls his witnesses, with the like liberty of calling fresh evidence in addition to what he may have relied upon on the hearing of the information; and, as soon as his own case is closed, the respondent has a general reply upon the whole case.

Fresh evidence.

Court may regulate its own practice.

The Court of Quarter Sessions, however, may regulate its own practice with regard to the hearing of appeals, and if such practice be clearly shown to have been adopted, the Court will not interfere with their discretion in this respect unless it be manifestly unjust (b).

(z) *R. v. JJ. Wilts*, 12 A. & E. 739; *R. v. Berry*, 28 L. J., M. C. 86, 90.

(a) If the respondent does not appear in support of the conviction, it may be quashed at once with costs after service of notice of appeal has been proved; *R. v. Purdey*, 34 L. J., M. C. 4; 5 N. R. 76.

(b) *R. v. JJ. Derbysh.*, 16 Jur. 1071; 22 L. J., M. C. 31, S. C.; *R. v. JJ. Montgomerysh.*, 3 D. & L. 119; 14 L. J., M. C. 142; *R. v. JJ. Warwicksh.*, 6 Q. B. 750; 14 L. J., M. C. 39; *R. v. JJ. Surrey*, 18 *Id.* 175. The following is the rule of practice adopted on the trial of appeals at the quarter sessions for Staffordshire:—In all cases the party, whether respondent or appellant, who is called upon to begin is at liberty to open his case by stating

the general nature or outline of it, and then to give his evidence,—at the close of which, the opposite party is, in like manner, at liberty to state the general nature or outline of the case about to be proved by him: at the close of the evidence on both sides, the counsel on each side address the Court *once* on the whole case, the party whose evidence was first given having the last speech. If evidence is only given on *one* side, the counsel on that side addresses the court at the close of it, and then the counsel on the other side. The respondent party begins in all cases except where the affirmative of all the issues raised lies upon the appellant, in which case the appellant begins.



The Court of Quarter Sessions, on appeal, will take judicial notice of the petty sessional divisions of a county (c). The General and Quarter Sessions Procedure Act, 12 & 13 Vict. c. 45, s. 3 (d), after reciting that a statement of the grounds of appeal, when required by statute, is for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial, enacts that upon the hearing of any appeal, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the receipt of legal evidence offered in support of any ground of appeal shall prevail, unless the Court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial; and if the Court is of opinion that any objection to any ground of appeal, or the reception of evidence in support thereof, ought to prevail, it may amend such ground of appeal on such terms, as to payment of costs and postponing the trial, as shall appear just and reasonable. Provision is also made for the payment of costs in the event of the grounds of appeal being frivolous, or a frivolous appeal being brought and abandoned (e).

Judicial notice of petty sessional divisions.

Grounds of appeal.

Amendment of grounds of appeal.

In some cases, fresh grounds of appeal may be delivered after an adjournment, even although the adjournment may have been at the instance of the appellant (f).

The 7th section, as we have seen (g), after reciting that in many cases orders or judgments have, on appeal or removal by *certiorari*, been quashed or set aside upon objections to the *form* of the order of judgment, irrespec-

Amendment of orders or judgments of justices on appeal.

(c) *R. v. Whittles*, 13 Q. B. 248.

(d) This act is set forth at length in the Appendix.

(e) Sect. 4, *post*, p. 382.

(f) *R. v. Kendal*, 1 El. & El. 492;

28 L. J., M. C. 110; see also *R. v. JJ. Derbysh.*, 6 A. & E. 912, n. (b); *R. v. Arlecdon*, 11 A. & E. 87.

(g) *Ante*, p. 292.

tive of the truth and merits of the matters in question, enacts, that if upon the trial of any appeal against any order or judgment given by any justice, or upon the return to any *certiorari*, any objection shall be made on account of *any omission or mistake in the drawing up of such order or judgment*, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order and judgment. The decision of sessions is to be final as to the sufficiency of the statement of grounds of appeal, and the amending or refusing to amend orders or judgments, or the statement of grounds of appeal, is not to be reviewed in any Court by *certiorari*, *mandamus* or otherwise (*h*).

It will be observed, that the enacting part of the above section, relating to amendments of orders and judgments, is larger than the recital, which points only to defects in form; but as the preamble cannot control the enacting part where it is expressed in unambiguous terms, it seems that the section will apply to all omissions

(*h*) Sect. 9. *R. v. Llangenny*, 4 B. & S. 311; 32 L. J., M. C. 265; *R. v. Ruyton*, 1 B. & S. 534; 30 L. J., M. C. 229. Similar provisions have been enacted with regard to orders of removal, 11 & 12 Vict. c. 31, ss. 4, 6, and orders in lunacy matters, 16 & 17 Vict. c. 97, ss. 112, 113. Under the former of these statutes it has been held that an entirely new ground of removal may be added, *R. v. Llangenny*, *supra*; and the words "Justices for the Borough" may be altered into "Justices in and for the Borough;" *R. v. Hellingley*, 1 El. & El. 749; 28 L. J., M. C. 167. Under the latter statute (16 & 17 Vict. c. 97), it was held that, on appeal by overseers against an order of settlement of a lunatic pauper, there was no power to amend the order by in-

serting "Guardians" for "Overseers;" *R. v. Liverpool*, 2 El. & El. 687; 29 L. J., M. C. 137; see also *R. v. Amlwch*, 4 B. & C. 757; *R. v. Bingley*, 4 B. & Ad. 567, n.; *R. v. Carmarthensh.*, *Id.* 563. An order of affiliation omitted to state that the father's residence was within the petty sessional division, but the summons alleged this fact, and on a *certiorari* to quash the order, the Court allowed it to be amended in this respect; *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. A certificate ordering the diversion of a highway, and the stopping up of several others, may be quashed as to the diversion, and confirmed as to the stopping up; *R. v. Midgley*, 33 L. J., M. C. 188.

or mistakes in the drawing up of the order or judgment, whether it be matter of substance or of form only (*i*). Although the question has not yet been decided, the better opinion seems to be that a conviction is included in the above words "order or judgment" (*k*).

The justices at sessions may, it seems, alter their judgment during the continuance of the sessions (*l*).

If the sessions decide upon an appeal, though erroneously, the Court of Queen's Bench has no jurisdiction to review their judgment, except on a case sent up for its consideration; and therefore, where the sessions, having heard the witnesses for the appellant, had refused to hear those for the respondent, on the ground that their testimony had been prefaced by observations on the part of the advocate, and that he had rested his case on his argument as to the insufficiency of the case proved on the other side, the Court refused to grant a *mandamus* to rehear the appeal (*m*). On that occasion, *Bailey, J.*, said—"There is no instance, I believe, which can be found, where this Court have interfered, by *mandamus*, to direct the justices to rehear an appeal which they have

Altering judgment during sessions.

Decision of sessions conclusive, though erroneous, unless a case reserved.

(*i*) See the note to this section by Mr. *Foot*, in his useful edition of the act, p. 28.

(*k*) See Mr. *Foot's* edition of the act, p. 25, n. He cites 5 Geo. 2, c. 19, which mentions only "judgments or orders," but which has been held to include convictions, and is of opinion that the above section will include convictions as well as orders, or, at any rate, so much of the conviction as can fairly come within the word "judgment,"—which, as we have seen, *ante*, p. 250, consists of the adjudication and the award of punishment. Convictions are expressly excluded from the above act in two instances,—first, as regards notices of appeal (s. 2), and secondly, as regards references to arbitration (s. 12).

(*l*) *R. v. JJ. Leicestersh.*, 1 M. & S. 442; *R. v. JJ. Yorksh.*, 2 Q. B.

705. By 21 & 22 Vict. c. 71, s. 12, sentences of Courts of Quarter Sessions are to take effect from the time of the same being pronounced unless the Court otherwise directs.

(*m*) *R. v. JJ. Carnarvon*, 4 B. & Ald. 86. In *R. v. Hartington, Middle Quarter*, 4 El. & Bl. 780; 24 L. J., M. C. 98, it was decided that an order of removal unappealed against or confirmed on appeal was conclusive, not only as to the parts directly decided, but as to those facts also that were mentioned in the order, and were necessary steps to the decision of the settlement. The confirmation of an order by sessions, subject to a case, leaves the order exactly as it was before the confirmation; *R. v. JJ. Pembrokesh.*, 2 B. & Ad. 391; *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J., M. C. 89, *S. C.*

once already heard. In this case, they entered into the consideration of this appeal, and, after having heard it, they have decided that the respondents ought not to be allowed to call witnesses in reply. It is possible that, in that decision, they may have been wrong; but it seems to me, that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this Court a court of appeal from the quarter sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment, although no case has been sent to us for that purpose. It is the duty of the sessions to hear and decide; and, if they entertain any doubts, to submit them to this Court; but where they do not desire our interference, we have no jurisdiction." *Holroyd, J.*—"If it had appeared in this case, that the sessions had heard one side, and had altogether refused to hear the other, I should have thought it the same as if the case had not been heard at all, and I should have been of opinion that this *mandamus* ought to issue; but, in this case, it appears to me that this was merely a question as to the practice of the sessions, who have determined that the evidence tendered ought not to have been introduced with observations on the part of the advocate. I think, therefore, that this Court has no jurisdiction to interfere in such a case" (n).

Where the sessions on an appeal decide upon a point preliminary to the whole case, or to the reception of a particular piece of evidence, that they will not hear the case further, their decision is conclusive, if the point involve matter of fact only; it is otherwise if it raise a question which the Court can perceive to be one of law,

(n) See 1 Chit. Rep. 164; *R. v. Monmouth*, 7 D. & R. 334; 3 D. & *Farringdon*, 4 D. & R. 735; 2 D. & R. Mag. Ca. 410; 4 B. & C. 844, R. Mag. Ca. 365, *S. C.*; *R. v. JJ. S. C.*

or a mixed question of fact and law, as whether sufficient search has been made for an original document to let in secondary evidence of its contents(*o*). The question, whether the statement of the grounds of appeal is sufficiently specific is of the former kind, and therefore for the sessions to determine(*p*), and it is now expressly enacted by sect. 9 of 12 & 13 Vict. c. 45, that the decision of the Court of General or Quarter Sessions, upon the hearing of any appeal as to the sufficiency of the statement of any ground of appeal, and as to the amending or refusing to amend any order or judgment of justices appealed against, or the statement of any ground of appeal, and as to the substitution of any new recognizance, shall be final, and shall not be liable to be reviewed in any Court by means of a writ of *certiorari* or *mandamus*, or otherwise.

By the 11th section of 12 & 13 Vict. c. 45, it is enacted that at any time after notice given of appeal to any Court of General or Quarter Sessions against "any judgment, order, rate or other matter"(*q*), (except an order in bastardy, or a proceeding under any of the statutes relating to the revenue of excise or customs, stamps, taxes or post office,) for which the remedy is by such appeal, it shall be lawful for the parties, by consent and by order of any judge of one of the Superior Courts of Common Law, to state the facts of the case in the form of a special case for the opinion of such Superior Court, and to agree that a judg-

Power to state a special case without going to the sessions previously.

(*o*) *R. v. JJ. Hinckley*, 3 B. & S. 885; 32 L. J., M. C. 158. The question in such cases is "whether there was reasonable evidence to satisfy the sessions that the document was lost;" per Blackburn, J., *Id.* p. 160.

(*p*) *R. v. JJ. Kesteven*, 3 Q. B. 810; overruling *R. v. JJ. Carnarvonsh.*, 2 Q. B. 325; and *R. v. JJ. West Riding*, *Id.* 331. See also *R. v. Percy*, 17 Q. B. 902; 16 Jur. 193; 21 L. J., M. C. 129, S. C.; *R. v. JJ. Cambridgesh.*, 1 L. M. & P. 4;

19 L. J., M. C. 130 (Bail Court); *Re Pratt*, 7 A. & E. 27; *R. v. Eyre*, 7 El. & Bl. 619; 26 L. J., M. C. 14; and *ante*, p. 372.

(*q*) See *ante*, p. 374, n. (*k*). This section contains the additional words "or other matter," which means other matter *ejusdem generis* as the matters preceding it. See *R. v. James*, 1 East, 303, n.; *Sandiman v. Breach*, 7 B. & C. 100; *Kitchen v. Shaw*, 6 A. & E. 729; *Ex parte Strong*, 3 Com. L. Rep. 76 (Bail Court).

ment in conformity with its decision, and for such costs as such Court shall adjudge(*r*), may be entered on motion by either party at the sessions next or next but one after the decision shall have been given; and the judgment is to have the same effect as if it had been given by Court of General or Quarter Sessions upon an appeal duly entered and continued(*s*). The recognizances entered into for the prosecution and trial of the appeal are not to be deemed forfeited by the agreement for the special case(*t*).

Provision is also made for referring to arbitration disputes for which the remedy has been by appeal to quarter sessions, and such reference may be by order of a judge of the Court of Queen's Bench, or by order of the Court of Sessions(*u*).

This class of provisions, however, does not apply to summary convictions, orders in bastardy, or to proceedings under any of the statutes relating to the excise or customs, stamps, taxes or post office.

The Court of Queen's Bench has no authority to compel the sessions, by *mandamus*, to give their reasons for their judgment, or make any special entries on their records(*x*). Neither, as we have seen, will the Court interfere with the practice of the sessions, unless it appears to be manifestly wrong or unjust(*y*).

(*r*) The practice is to give costs as between party and party; *Earl of Clarendon v. Rector of St. James, Westminster*, 10 C. B. 806; 20 L. J., M. C. 213.

(*s*) Mr. *Foot* suggests that this section will operate as a partial repeal in this respect of those statutes which take away the *certiorari*. See his edition of the act, p. 41, n. (*k*); see *post*, *Certiorari*, and *R. v. JJ. Middlesex*, 8 D. & R. 117; and as to the practice on the argument of such special case, see *JJ. Bedfordsh. v. St. Paul's (Bedfordsh.)*, 7 Ex. 650; 21 L. J., M. C. 228, S. C.

(*t*) Sect. 16.

(*u*) Sects. 12—16. These sec-

tion will be found at length in the Appendix. If the order of reference be silent as to the costs of the arbitration, the subsequent sessions at which the award is entered, as the judgment of the Court, have no power to order either party to pay the costs of the reference; *R. v. JJ. West Riding*, 34 L. J., M. C. 142.

(*x*) *R. v. JJ. Devon*, 1 Chit. Rep. 34, 164; and *R. v. JJ. Worcestersh.*, *Id.* 649; see *Ex parte Morgan*, 2 Chit. 250; *R. v. Flockwold*, *Id.* 251; *R. v. JJ. Wilts*, *Id.* 257.

(*y*) *R. v. JJ. Essex*, 2 Chit. 385. See *R. v. JJ. Bucks*, 6 D. & R. 142; 3 D. & R. Mag. Ca. 23; *ante*, p. 374.

Reference to arbitration.

Sessions not bound to give reasons or make special entries.

Practice of sessions conclusive unless manifestly unjust.

In *R. v. Justices of Cambridgeshire*(z), where the defendant had been convicted of forcibly passing a turnpike-gate without paying tolls, the sessions, on appeal, rejected evidence to show that the gate had been unlawfully erected; and the Court of Queen's Bench refused a *mandamus* to compel the sessions to receive such evidence, the admissibility of it being exclusively a question for the justices. The Court also refused to issue a *mandamus* to the sessions to hear an original complaint touching the conduct of the trustees in the erection of the gate, after a lapse of twenty-six years from the time when it was erected, leaving the party to proceed by indictment for the nuisance, or by an action of trespass, if his passage was obstructed(a).

And although, under circumstances, the Court of Queen's Bench may grant a *mandamus* to the sessions to state a case, yet it will not, if it be clear that the proceedings can lead to no result; as where the sessions insisted upon the insertion of a fact, which would be fatal to the party requiring the case(b). The sessions will not be compelled to *grant* a case, that being a matter purely for their discretion(c).

The power of the sessions to award *costs*, on determining the appeal, depended upon the statutes by which the appeal was directed, many of which expressly conferred such power(d). But otherwise it was not incidental to their jurisdiction.

Costs on appeal.

Now, however, by 12 & 13 Vict. c. 45, s. 5, upon any appeal, the Court may order the party(e) against whom

(z) 1 D. & R. 325; 1 D. & R. Mag. Ca. 86.

(a) As to commanding an act to be done *nunc pro tunc*, see *R. v. Mayor, &c., Rochester*, 7 E. & B. 910; 27 L. J., Q. B. 45; *R. v. North Bierley*, El. Bl. & El. 519; 27 L. J., M. C. 275, 277.

(b) *R. v. JJ. Pembroke*, 2 B. & Ad. 391.

(c) *Ex parte Inhabitants of Jarvin*, 9 Dowl. 120.

(d) See 10 Anne, c. 16, s. 9; c. 19, s. 120; 11 Geo. 2, c. 19, s. 5. See Appendix, tit. "Rent;" order on 11 Geo. 2, c. 19, confirmed with costs. As to the power of sessions to allow costs in prosecutions of vagrants, see 5 Geo. 4, c. 83; and *Reg. v. Smith*, *infra*.

(e) This means the informant or defendant, although the justices may be the formal parties to the appeal; *R. v. Smith*, 29 L. J., M. C. 216; *R. v.*

the same shall be decided to pay to the other party (*f*) such costs as appear just and reasonable. They are to be recovered in the manner pointed out by s. 27 of 11 & 12 Vict. c. 43(*g*), whereby, if the statute give costs and the sessions order them, the order must direct them to be paid to the clerk of the peace (*h*), to be by him paid over to the party entitled to them, and must state within what time they shall be paid. If they are not paid within that time, whether the party is or is not bound by any recognizance conditioned to pay them (*i*), the clerk of the peace or his deputy, upon application of the party entitled to the costs, or of any person on his behalf, and on payment of a fee of one shilling, is to grant a certificate (*k*) that the costs have not been paid, and upon production thereof to any justice for the same county or place a warrant of distress may issue, and in default of distress a warrant of commitment for any time not exceeding three calendar months, unless such costs, together with the costs of the distress and of the commitment and conveying to prison (if ordered), shall be sooner paid. A mistake in ordering costs to be paid directly to the party to the appeal, instead of to the clerk of the peace, was held not to be a defect of

*JJ. Hants*, 1 B. & Ad. 659; and although the informant may not appear in support of the conviction; *R. v. Purdey*, 34 L. J., M. C. 4; 5 N. R. 76.

(*f*) Notwithstanding these words the order should direct the costs to be paid to the clerk of the peace, to be handed over by him to the other party; *Gay v. Mathews*, 33 L. J., M. C. 14.

(*g*) See *R. v. Huntley*, 3 El. & Bl. 172; 18 Jur. 745, S. C.; *R. v. Hellier*, 17 Q. B. 229.

(*h*) See *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58, affirmed in error, 33 *Id.* 14; *R. v. Hellier*, 17 Q. B. 229, and *R. v. Huntley*, 3 El. & Bl. 172; 18 Jur. 745; 23 L. J., M. C. 106, S. C.; *R. v. Binney*, El. & Bl. 810; 22 L. J., M. C. 127, S. C.; *R. v. JJ. Ely*,

5 El. & Bl. 489; 1 Jur., N. S. 1017; 25 L. J., M. C. 1.

(*i*) The 5th section of 12 & 13 Vict. c. 45, includes appeals in which the appellant has entered into recognizances to pay costs, and a distress warrant may issue for them on the certificate of the clerk of the peace that they remain unpaid; *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 123. The act applies to the allowance of the accounts of a surveyor of highways; *R. v. Padwick*, 8 El. & Bl. 704; 27 L. J., M. C. 113. It does not apply to the Crown; *R. v. Beadle*, 7 E. & B. 492; 26 L. J., M. C. 111. See *Moore v. Smith*, 1 El. & El. 597; 28 L. J., M. C. 126, as to difference between this Act and 20 & 21 Vict. c. 43.

(*k*) See form, Appendix.



jurisdiction but merely erroneous procedure, and the Court refused to set it aside, the act under which it had been made having taken away the *certiorari*(*l*).

It will be observed that the above section uses the word *decided* ; and where an appeal against a poor-rate was entered at the *Midsummer* sessions, and respited until the *Michaelmas* sessions, and then further respited at the instance of the appellant till the *Epiphany* sessions, four days previously to which the respondents gave notice that they would not oppose the appeal, and the appeal was accordingly allowed without opposition : it was held, that the appellant was entitled to costs, as upon an appeal which had been "heard and determined" within the meaning of 17 Geo. 3, c. 38, s. 4(*m*).

Where, however, the appellant against a conviction, after giving notice of appeal and entering into a recognizance, countermanded his notice, it was held that the respondents were not entitled to enter the appeal and proceed with it for the purpose of getting the conviction affirmed ; it was also held that there was no power in such a case to award costs, although the statute (17 Geo. 3, c. 3, s. 20) requires the sessions, on proof of notice of appeal, "to hear and determine the matter," and to award costs, the costs being merely ancillary to the appeal. Under such circumstances the recognizances may be estreated, and it seems that the magistrates may proceed to enforce the conviction, as if no notice of appeal had been given(*n*).

The exact interpretation of this word *decided* would, however, seem to be of small moment, because taking this

(*l*) *R. v. Binney*, 1 El. & Bl. 810.  
(*m*) *R. v. Cawston*, 4 D. & R. 445 ;  
2 D. & R. Mag. Ca. 269.

(*n*) *R. v. Recorder of Bolton*, 2 D. & L. 510 ; see 12 & 13 Vict. c. 45, s. 6. It appears that a prosecutor cannot abandon a conviction, so as to defeat the appellant's claim

to costs occasioned by it ; see *Bradshaw v. Vaughton*, 8 C. B., N. S. 103 ; 30 L. J., C. P. 93. See as to abandonment of orders of removal under 11 & 12 Vict. c. 31, s. 8, *R. v. St. Michael's, Pembroke*, 16 Jur. 87.

section together with the next (which enacts, that in order to prevent frivolous appeals upon proof of notice being given the Court may give costs, though the appeal be not prosecuted or entered) it appears that the legislature intended to include all cases(*o*); and therefore under one section or the other the Court will have power to grant costs. In discussing the form of notice we showed that the naming the wrong sessions would be immaterial, if not calculated to mislead; and we may now further point out that in such a case if the appeal be abandoned, the right sessions may grant costs under s. 6(*p*). In addition to this, as we have already seen, the Court has power by s. 4 to order the appellant to pay the whole or part of the costs incurred in disputing frivolous and vexatious grounds of appeal.

Amount of costs to be specified in the order.

Delegation of authority.

The Court of Quarter Sessions cannot delegate their authority, but must themselves tax the costs during their sitting, and specify in their order the amount of costs to be paid. They cannot order a party to pay costs to be taxed by the clerk of the peace, but they may direct him to tax the costs in their aid, and, adopting his taxation as their own act, insert the amount in their order(*q*), provided all this be done before the end of the sessions(*r*), or in case of an adjournment on the adjournment day(*s*); but by *consent* the costs may be taxed after the sessions at which judgment was given(*t*).

(*o*) Per Crompton, J., in *R. v. Padwick*, 8 El. & Bl. 704; 27 L. J., M. C. 113, where a dismissal on the ground of want of jurisdiction was held to be a decision within sect. 5.

(*p*) *R. v. Recorder of Leeds*, 30 L. J., M. C. 86.

(*q*) Per Cur. in *Sellwood v. Mount*, 1 Q. B. 726, 735; *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125. See *R. v. JJ. Ely*, 5 El. & Bl. 489; 1 Jur., N. S. 1017; 25 L. J., M. C. 1; 2 Chit. Stat., by Wels. & Beav., pp. 430, n. (*a*), and 432,

n. (*a*); *R. v. Little Hatfield*, Q. B., Jan. 15th, 1856. See *ante*, p. 284, n. (*x*), as to a blank being left for the costs.

(*r*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125.

(*s*) *R. v. JJ. Hampsh.*, 33 L. J., M. C. 104.

(*t*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125; *Ex parte Shrewsbury and Hereford Railway Company*, 19 J. P. 274; 25 L. T. 65, S. C.

Where an order was confirmed subject to a case, nothing being said about costs, and afterwards the appellant abandoned the case, it was held that a subsequent sessions could not grant to the respondents the costs of the appeal, as the sessions at which the appeal was heard and determined alone had jurisdiction over the costs(*u*); and where, in a similar case, the costs were ordered by the Court of Quarter Sessions to abide the result, and the Court of Queen's Bench quashed the conviction, saying nothing about costs, it was held too late afterwards to tax them at the Quarter Sessions, there being nothing further to be done there, as the conviction had been removed from them and quashed(*x*).

The Court of Quarter Sessions has authority to make a standing order, that in all appeals costs shall follow the event of their judgment, unless the justices who hear the appeal shall order to the contrary(*y*).

The Crown, not being named, is not bound by the stat. 12 & 13 Vict. c. 45, ss. 5 and 6, and is therefore not liable to costs on an information by an excise officer, the Crown being the real party to such a proceeding(*z*).

The Highway Act (5 & 6 Will. 4, c. 50, s. 90) requires the Court of Quarter Sessions to award costs(*a*) in certain cases. It was held they could not be awarded generally in the terms of the act, but that the order must specify the amount. Sect. 90 of that act provides that the costs shall be recoverable in the same manner as penalties under

(*u*) *R. v. JJ. Staffordsh.*, 7 El. & Bl. 935; 26 L. J., M. C. 179; and see *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125; and *R. v. JJ. Hants*, 32 *Id.* 47.

(*x*) *R. v. JJ. Hants*, 32 *Id.* 46.

(*y*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125.

(*z*) *R. v. Beadle*, 7 El. & Bl. 492; 26 L. J., M. C. 111; see, under 20 & 21 Vict. c. 43, how distinguished, *post*, ch. V. The 18 & 19 Vict. c. 90,

which gives costs against the crown in certain cases, is confined to such informations, &c., as are mentioned in sect. 1, and to which the Attorney-General or Lord Advocate must be a party; *Id.*

(*a*) And a mandamus will be granted to them, to enter continuances in order to award costs; *R. v. JJ. Yorksh.*, 2 B. & S. 811; 31 L. J., M. C. 271.

the act. Sect. 101 provides that where penalties are recoverable, two justices, on proof of the offence, may convict the offender, and adjudge him to pay the penalty. Sect. 103 enacts that all penalties inflicted by the act for any offence, and all costs ordered by authority of the act (the manner of recovering which is not otherwise directed), shall, on conviction of the offences respectively, or upon order made as aforesaid, be levied by distress and sale. It was held, that non-payment of the costs ordered by sessions, under sect. 90, was not an "offence" within the act, and on which the party could be convicted on sect. 101, and that a warrant of distress under sect. 103, founded not on the order itself, but on the subsequent conviction for non-payment, was void(b).

Enforcing  
orders of ses-  
sions.

It is further enacted by sect. 18, that in all cases where any order is made by a Court of General or Quarter Sessions, the Court of Queen's Bench, or any Justice of that Court at Chambers, either in term or in vacation, upon the application of any person entitled to enforce such orders, and upon the production of a copy thereof under the hand of the clerk of the peace, or his deputy, and upon proof(c) of refusal or neglect to obey such order, may direct such order to be removed into the Court of Queen's Bench, and thereupon it shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs attendant upon the application and removal shall be recoverable in the same manner as if they were part of the order.

(b) *Sellwood v. Mount*, 1 Q. B. 726; and see *R. v. Long*, *Id.* 740; *R. v. Clark*, 5 *Id.* 887; *R. v. Mortlock*, 7 *Id.* 459; *R. v. JJ. Westmoreland*, 1 D. & L. 178; *R. v. Surveyor of Highway of Lambeth*, 3 Com. L. R. 35; *R. v. Huntley*, 3 El. & Bl. 172; *R. v. Southampton Dock Company*, 17 Q. B. 83; *R. v. Hellier*, *Id.*

229; see also *Lock v. Sellwood*, 1 Q. B. 736, S. P., where it was also held that no property passed to the vendee of goods seized and sold under such a warrant. The vendee was not a *bonâ fide* one, but the Court intimated that *bona fides* would make no difference in their opinion.

(c) *Semble* by affidavit.

No *certiorari* is necessary to remove the order to the Court of Queen's Bench under this section (*d*); when the order is brought up for the purpose of being enforced, it is open to the defendant, by an original application, to object to the illegality of it (*e*); and the Court will entertain objections to faults apparent on the face of a conviction brought up with the order of sessions confirming it, although the *certiorari* is taken away by the statute under which the conviction has been made (*f*).

It had been decided that the sessions could not award an attachment for contempt in not complying with their orders, the proper method being by indictment; but when an order was confirmed by the Court above, it might be enforced by attachment (*g*). Now, however, by the above section the effectual and summary mode of execution or attachment is provided for the enforcing of all orders of sessions whatever, whether confirmed by the Court above or not.

Where an appeal is heard and determined by the sessions, and there is an unreasonable delay in issuing process to enforce the order of the Court, a *mandamus* or rule will be granted to compel them to issue such process (*h*).

It should here be observed that by 11 & 12 Vict. c. 44, s. 6, where a warrant is granted by a justice on a conviction or order, which has been or is afterwards confirmed on appeal, he is not liable to an action for anything done

Effect of confirming conviction on appeal upon liability of magistrate issuing warrant.

(*d*) *Hawker v. Field*, 20 L. J. (N. S.) M. C. 41.

(*e*) *R. v. Hellier*, 17 Q. B. 229; 21 L. J., M. C. 3; see *R. v. Huntley*, 3 El. & Bl. 172, *supra*, and *Ex parte Overseers of Fletton*, 29 L. J., M. C. 205.

(*f*) *R. v. Hyde*, 21 L. J., M. C. 94. In *R. v. Hellier*, *supra*, the Court also decided, that under the circumstances, the defendant was not precluded by laches or acqui-

escence from objecting to the order, and that s. 29 of 9 Geo. 4, c. 61 (Alehouse Act), giving costs on appeal to the justices, whose order was appealed against, was repealed by 11 & 12 Vict. c. 43, ss. 27 and 36.

(*g*) *R. v. Chaffey*, 2 Ld. Raym. 858.

(*h*) *R. v. JJ. Warwicksh.*, 4 Nev. & Man. 370; 2 A. & E. 768; 11 & 12 Vict. c. 44, s. 5.

under the warrant by reason of any defect in the conviction or order.

Interested justice present during appeal.

We have already considered the effect of a justice interested in the appeal being present during the hearing of it (*i*).

(*i*) *Ante*, pp. 38—45. See also *R. v. JJ. London*, 18 A. & E. 416, n.; *R. v. JJ. Suffolk*, *Id.* 416; *Ranger v. The Great Western Railway Company*, 5 H. L. Cas. 72; *R. v. JJ. Surrey*, 22 November, 1855, 19 J. P. 755.

## CHAPTER IV.

OF THE REMOVAL OF THE COMMITMENT OR CONVICTION  
BY HABEAS CORPUS AND CERTIORARI.

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## SECT. 1.—Of Removal by Habeas Corpus.

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IF there be any fault or illegality in the commitment alone, the defendant may obtain his discharge by suing out a writ of *habeas corpus ad subjiciendum*, which may be granted by any of the superior Courts of Westminster in term time, or by a judge of any of those Courts in vacation, directed to the gaoler, in whose custody the defendant is detained (*a*). And not only may it be granted by a judge for his own Court, and returnable therein, but it has also been decided that a Baron of the Exchequer may in vacation under 1 & 2 Vict. c. 45,

Where the proper remedy.

Where to apply.

(*a*) The writ of *habeas corpus* at common law may be applied for, issued, and made returnable immediately at chambers; *Re Leonard Watson and others* (the Canadian prisoners), 9 A. & E. 731. As to the writ issuing out of England into a

colony or foreign dominion of the Crown, see *Id.* 25 Vict. c. 20; *Re Brown*, 33 L. J., Q. B. 193; *Anderson's case*, 30 *Id.* 129; *Crawford's case*, 13 Q. B. 613, 625; 18 L. J., Q. B. 225; and *R. v. Cowle*, 2 Burr. 856.

s. 1 (relating to the powers of Judges at Chambers), and in exercise of the common law power possessed before that statute by the Court of Queen's Bench, issue the writ under the seal of the Queen's Bench returnable in that Court in term time; and this on affidavits entitled and sworn in the Exchequer (*b*).

Though all the Queen's Courts at Westminster have power to issue this writ, it is seldom sued out of any other than the Court of Queen's Bench by persons committed upon convictions by justices; because the other Courts can only remove the body and the warrant of commitment, but cannot send for and examine and set aside the conviction itself, which is the prerogative of the Queen's Bench.

Who may apply.

A woman may move for a writ of *habeas corpus* on behalf of her husband (*c*); and where access to a prisoner was denied by the gaoler, the writ was granted on the application of the prisoner's father (*d*).

How to apply.

The application must be supported by an affidavit from the prisoner himself, or it must be shown that he is so coerced as to be unable to make one (*e*).

Although the right to remove the conviction by *certiorari* be taken away, yet, on moving for a writ of *habeas corpus*, a verified copy of the conviction may be brought before the Court for the purpose of defeating the commitment (*f*).

(*b*) *Carus Wilson's case*, 7 Q. B. 984.

(*c*) *Ex parte Cobbett*, 15 Q. B. 181, n. In *Ex parte Newton*, 16 C. B. 97; 24 L. J., C. P. 148, the father of a prisoner applied personally for the writ, but the Court said that, without laying down any invariable rule, they thought the application should be made by counsel.

(*d*) *Re Thompson*, 6 H. & N. 193; 30 L. J., M. C. 19.

(*e*) *Re Parker and others* (the Canadian prisoners), 5 M. & W. 32.

(*f*) *R. v. Mellor*, 2 Dowl. 173. See *Re Boothroyd*, 15 M. & W. 1;

*R. v. Chaney*, 6 Dowl. 281; *Re Fletcher*, 1 D. & L. 726; *Re Reynolds*, 1d. 846; *R. v. Martin*, 2 Q. B. 1037; *Re Allison*, 10 Exch. 561. In the last cited case, it was held, that upon an application for a writ of *habeas corpus* in the Exchequer, upon the ground of the commitment being defective, the conviction may be brought before the Court verified by affidavit, but in such case the commissioner before whom the affidavit is sworn ought to certify, on the exhibit annexed, that it is the document referred to.



The application may be for a rule calling on the keeper of the prison to show cause why a writ of *habeas corpus* should not issue to bring up the body of the prisoner, and why, in the event of the rule being made absolute, he should not be discharged without the writ of *habeas corpus* actually issuing, and without his being personally brought before the Court (*g*). Form of application.

But if no cause be shown against the rule, a writ of *habeas corpus* must still issue before the prisoner can be discharged (*h*).

The costs of successfully opposing the issuing of the writ of *habeas corpus*, or the discharge of the prisoner thereunder, are not allowed (*i*). Costs of opposing issuing of writ.

Objections to the writ for irregularity are to be taken by way of substantive motion to set it aside, and not upon the motion for the discharge of the prisoner upon the return (*j*). Objections to writ, how taken.

It seems, that if the writ has been obtained on fraudulent misrepresentation, the Court will quash it on motion; but they will not do so merely because it appears that the judge who issued it abstained from inquiring into facts, which, if known to him, might have induced him to refuse it or only to grant a rule nisi for the writ (*k*), and the

(*g*) *Ex parte Eggington*, 2 El. & Bl. 717; 23 L. J., M. C. 44; 18 Jur. 224, *S. C.* Objection was made by counsel to this form, but the Court observed that it was a usual and convenient course, as it saved expense. See *Re Geswood*, 2 El. & Bl. 952, where the rule was in the same form, and as to personal attendance, see *Clark v. Smith*, 3 C. B. 984. See further, as to the form of the application, *Ex parte Jacklin*, 2 D. & L. 103; 5 C. B. 103, n. (*a*), where the rule was to show cause why the body of *A. B.* should not be brought up for the purpose of his being discharged, or why he should not be discharged out of custody without being brought up, on notice of the rule to be given to

the justices and keeper, and *C. D.* (the prosecutor). So, if the application be for the purpose of admitting the prisoner to bail, it may be made a part of it that he may be bailed in the country, and this without an affidavit of poverty. See *R. v. Jones*, 1 B. & Ald. 209; *R. v. Massey*, 6 M. & S. 108; *R. v. Booker*, 2 Dowl. 446; *R. v. Gregory*, 9 *Id.* 129.

(*h*) *Ex parte Jacklin*, 5 C. B. 103, n. (*a*).

(*i*) *Re Cobbett*, 14 M. & W. 175.

(*j*) *R. v. Baines*, 12 A. & E. 210—231; *Ex parte Hughes*, 18 Jur. 447; *Re Collier and Bailey*, 3 El. & Bl. 607.

(*k*) *Carus Wilson's case*, 7 Q. B. 984.

Court will seldom quash the writ upon grounds which may be returned to it (*l*).

Objection,  
when waived.

If the writ issue to bring up a prisoner who is in execution in a criminal matter (*m*), it should issue from the Crown Office; but the objection to its issuing from the civil side of the Court may be waived (*n*).

Proceedings  
on.

Upon the delivery of the writ to the gaoler, or other officer who holds the party in custody, the warrant of commitment is returned along with the body of the prisoner (*o*); and if it appear to be illegal or insufficient upon the face of it, the Court, before which the writ is returnable, quashes the commitment, and orders the defendant to be discharged (*p*). The Court will not at the desire of the committing magistrates direct or advise the gaoler to substitute a return to a writ of *habeas corpus* for the one proffered to be made (*q*). The return is taken to be true at all events in the first instance, and need not be verified by affidavit (*r*).

The return.

Upon objection to the return on behalf of the prisoner, counsel having been heard against the objection, only one counsel is allowed to reply in support of it (*s*).

The Court, upon the return to a writ of *habeas corpus*, have nothing before them but the warrant of commitment itself; and, therefore, where a commitment was "until the party should pay a fine to the king," without specifying any sum to be paid, the Court nevertheless refused to discharge him upon the commitment alone, till the conviction itself was brought before them; though when

(*l*) *Carus Wilson's case*, 7 Q. B. 984. As to amending the writ at the instance of the prisoner, see *Ex parte Davies*, 4 Bing. N. C. 17.

(*m*) As to what is a "criminal matter" within 56 Geo. 3, c. 100, see *post*, p. 394.

(*n*) *Easton's case*, 12 A. & E. 645. The Court will decide such a question as this, although at the time of the decision the sentence can no longer be carried into effect, the time for doing so having ex-

pired. *Id*.

(*o*) *Caith*. 508.

(*p*) See Bac. Ab. tit. "Habeas Corpus."

(*q*) *Re Fletcher*, 1 D. & L. 726; and see *R. v. Turk*, 10 Q. B. 540. As to substituting a good conviction or commitment for a bad one, see *ante*, p. 289.

(*r*) *The Canadian Prisoners' case*, 9 A. & E. 731.

(*s*) *Curus Wilson's case*, 7 Q. B. 984.

that was done, and it appeared that no precise sum was thereby awarded, the defendant was discharged (*t*).

We have, however, seen that, *primá facie*, the conviction, as recited in the commitment, is taken to be as recited, and it lies on the party asserting it to be different to bring it before the Court by *certiorari*, or, if that process is not available, by affidavit (*u*).

The *return* should set forth the description and authority of the persons by whom the commitment was made, by describing them as justices of the peace, &c. (*x*). And in the return the Court will intend nothing which ought to have been made the subject of distinct and positive allegation (*y*).

If there is ambiguity or uncertainty in the return, the prisoner will be discharged, as appears from the following case (*z*). The return to a *habeas corpus*, after stating that the prisoner was found on board a smuggling vessel, liable to forfeiture under the statute 57 Geo. 3, c. 87, and that he was a seaman, &c., proceeded to state, "that he, being such subject and seafaring man as aforesaid, and not being only a passenger on board the vessel at the time she became liable to forfeiture, was afterwards, to wit, on, &c., carried before G. D., Esq., Mayor of Dover, a justice, &c., residing near Dover, the port into which the vessel had been carried, and, *upon due proof*, as by the statute in that case made and provided is required, was committed to answer such information, and abide such judgment as might be given." It then proceeded to set

Ambiguous  
return.

(*t*) *R. v. Elwell*, Str. 794; 2 Ld. Raym. 1514; and see tit. "Commitment," *ante*, p. 328, *et seq.* Sometimes it is necessary to bring up the depositions by *certiorari*, as under 8 & 9 Vict. c. 87, s. 103; *post*, p. 427.

(*u*) *Ante*, p. 326.

(*x*) 2 Ld. Raym. 980.

(*y*) *Eden's case*, 2 M. & S. 226. See process by attachment for a false return; *R. v. Altes*, 8 L. J.

(N. S.) Exch. 229.

(*z*) *Nash's case*, 4 B. & A. 295. See, under 8 & 9 Vict. c. 87, s. 50, for being found on board a smuggling vessel, *Van Boven's case*, 9 Q. B. 669. See also, under 3 & 4 Will. 4, c. 53, s. 4, for being within a league of the coast and having on board spirits, &c., contrary to that act, *Attorney-General v. Le Revert*, 6 M. & W. 405.

forth an impressment and detainer. The objection to the detainer was, that it was insufficient, for not setting forth the *proof*, upon which the prisoner had been committed. After argument, *Abbott*, C. J., said—"This act of parliament is one highly beneficial in preventing frauds upon the revenue; but, at the same time, inasmuch as it trenches very strongly on the liberty of the subject, we must take care that its provisions are strictly pursued. This averment is one of a conclusion of law: it states that, *upon due proof*, the party was committed. Now, whether that was so, this return does not enable us to judge, for, unless we know what the proof was which was given, it is impossible for us to tell whether it was the proof required by the act of parliament. The circumstances stated in the introductory part of this return seem to me to be quite sufficient to warrant this commitment; and if it had been stated that, upon due proof of the matters before mentioned, the prisoner was committed, I should have thought it sufficient. In the present case, however, the prisoner must be discharged." *Holroyd*, J., "The power of the magistrate to commit depends on the proof before him, and the rule is, that *where a limited authority is given, it must be shown to have been strictly pursued*. Here it is only stated, that, on due proof, the justice committed; but he may suppose that to be due proof which is not the proof required by the statute: he ought, therefore, to state what it was; and then the Court will be enabled to form a judgment whether he has judged right." The prisoner was discharged. It will be borne in mind that the evidence is not now, as a general rule, set forth in the conviction or commitment (*a*).

So, where a return to a writ of *habeas corpus* stated, that the prisoner was found on board a vessel discovered within eight leagues of "that part of the coast of Great Britain called Suffolk," to wit, within eight leagues of

(a) As to the exemption of informations under excise and customs

laws from the operation of 11 & 12 Vict. c. 43, see *ante*, p. 60.

Orfordness, in that county; it was held not to be averred with sufficient certainty, that this place (where the vessel was found) was not between the North Foreland in Kent and Beachy Head in Sussex, between which points the vessel would have been only liable to seizure if found within *four* leagues of the coast. For, although the Court will take judicial notice of the general divisions of the kingdom into counties,—because they are continually in the habit of directing their process to the sheriffs of those counties, and because they are mentioned in a great variety of acts of parliament,—they will not take judicial notice of the local situation and distances of the different places in the counties of England from each other (a).

In like manner, where a return to a *habeas corpus* stated that a vessel with smuggled goods on board was found *at the fish-market*, within the limits of the ancient town of Rye; the Court held, that it did not come within the 24 Geo. 3, sess. 2, c. 47, s. 1, by which, if a vessel *be found at anchor*, or *hovering*, within the limits of any of the ports of this kingdom, or within four leagues of the coast thereof, with smuggled goods on board, she becomes liable to forfeiture; for, the Court said, “it is quite consistent with the return that the vessel might be in the fish-market in the ancient town of Rye, but drawn up on the land, which would clearly not be a case within the statute” (b).

But if the return shows one good cause of detention, and another bad, the defendant will be remanded. Thus, where two causes were assigned for the prisoner’s detention: first, a conviction on 24 Geo. 3, c. 47, s. 1, and judgment under 3 Geo. 4, c. 110, to serve in the navy, for smuggling; and, secondly, desertion from the navy; it was held, that the latter cause could not be impeached, on affidavit, for the purpose of showing either that the

Return showing one good cause of detention.

(a) *Deybel’s case*, 4 B. & Ald. 243; (b) *Souden’s case*, 4 B. & Ald. 294.  
 Tayl. Ev., vol. i., p. 25 (4th ed.)

prisoner had never been a seaman in his Majesty's navy, —or that, supposing him in fact a seaman, he had been illegally impressed in the first instance; and, therefore, the return being sufficient to justify his detention on that ground, the Court would not enter into the validity of the conviction (c).

Controverting  
return.

In considering the important question, whether the return to the *habeas corpus* can be controverted, a distinction must be drawn between those cases in which the writ issues at common law, or under the stat. 31 Car. 2, c. 2, or under the stat. 56 Geo. 3, c. 100.

The writ issued at common law on probable cause shown that a person was imprisoned without cause (d). The statute 31 Car. 2, c. 2, applies only to the writ of *habeas corpus* issuing on behalf of a person in custody for "criminal or supposed criminal matters," except treason and felony; and the stat. 56 Geo. 3, c. 100, applies only to cases of commitment or detainer, "otherwise than for some criminal or supposed criminal matter, and otherwise than for debt or on process in any civil suit."

At common law, it appears that at one time a defendant was allowed to traverse the return by plea (e), but it was afterwards held that it could not be traversed, although it might be confessed and avoided (f), and that for a false return the defendant's only remedy was by action (g). Subsequently, however, the Courts received affidavits impeaching the truth of a return on motion for an attachment, and it has been said that probably they would admit them on motion to quash the return (h).

(c) *R. v. Rogers*, 3 D. & R. 607; 1 D. & R. Mag. Ca. 59; *R. v. Richards*, 5 Q. B. 926; *Re Cobbett*, 7 Q. B. 187; 2 Phillips (Chanc. Rep.) 289.

(d) *Bac. Ab. Hab. Corp. B.*; *Hobhouse's case*, 3 B. & Ald. 420; *Ex parte Knight*, 2 M. & W. 106; 2 Inst. 615.

(e) *De Vine's case*, O. Bridgm.

288. See next Chapter, Sect. V.

(f) 4 A. & E. 765; *Re Clarke*, 2 Q. B. 619, 634.

(g) *R. v. Douglas*, 12 L. J., Q. B. 49; 2 Hawk. P. C. c. 15, s. 71; Cro. Eliz. 821.

(h) *The Canadian Prisoners' case*, 9 A. & E. 731; *Ex parte Martin*, 1 De Gex, 485; Corner's Cr. Prac. 116.

If the case came within the stat. 31 Car. 2, c. 2, the Court would not receive affidavits impeaching the return(i). But if the case came within the stat. 56 Geo. 3, c. 100, then, by the express terms of sect. 3, affidavits were admissible for this purpose.

Thus sect. 3 of that stat. enacts, "that in all cases provided for by this act, although the return to any writ of *habeas corpus* shall be good and sufficient in law, it shall be lawful for the justice or baron before whom such writ may be returnable, *to proceed to examine into the truth of the facts set forth in such return, by affidavit or affirmation, and to do therein as to justice shall appertain.*" And sect. 4 enacts, "that the like proceedings may be had in the Court for controverting the truth of the return of any such writ of *habeas corpus* awarded as aforesaid, although such writ shall be awarded by the Court itself, or be returnable therein." And where prisoners in custody of an officer of customs on a charge of smuggling were brought up by *habeas corpus* at common law, it was held that they might controvert the truth of the return on affidavit by virtue of these sections. The question was, whether the prisoners were persons confined "otherwise than for some criminal, or supposed criminal matter." After argument, *Abbott, C. J.*, said: "If no decision has taken place upon the statute, it is probable that the point was never made before. The object of the *Habeas Corpus Act*, 31 Car. 2, c. 2, was to provide against delays in bringing to trial such subjects of the king as are committed to custody for criminal, or supposed criminal, matters. The person making this return is not an officer to whose custody these persons have been committed; but he is a person, who, by the authority given him, has taken them into custody. It seems to me, therefore, that the writs of *habeas corpus*, in this instance, are not to be considered as writs issuing under the statute 31 Car. 2, but as writs issuing at

(i) *Carus Wilson's case*, 7 Q. B. 984; *E. 273*; *R. v. Rogers*, 3 D. & R. 607; *R. v. Clarke*, 2 Q. B. 619; *R. v. Batchelor*, 1 P. & D. 516; *R. v. Sheriff of Middlesex*, 11 A. & *Brenan's case*, 10 Q. B. 492.

common law, under the general authority of the Court; and, consequently, that the discussion of the truth of the return is left open by virtue of the 56 Geo. 3, c. 100, s. 4. This is not the case of a committal to a gaoler, or an officer of the Court, for an offence known as a crime; and the only question is, whether this is a criminal matter. The object of 56 Geo. 3, was to give the party a summary remedy, by controverting the truth of a return, instead of putting him to bring an action for a false return. There is very good reason for not permitting the truth of a return to be traversed where the party is charged with a crime, for that would be trying him upon affidavits; but here we are not called upon to try whether these persons have committed an offence, or that which may be called an offence. The objection to the proceedings against these persons is, that they have been carried a distance of 140 miles from the place where they were originally arrested. Part of the allegation in the return is, that they were taken to *Rochester* with their own consent. Now, I think the truth of the return, in that respect, may be controverted. The 56 Geo. 3 was passed in furtherance of the liberty of the subject, and therefore ought not to receive a restrained construction”(j).

It will be observed that in the preceding case the Court did not give a distinct answer to the question, whether the offence was a “criminal matter” or not, but came to a final decision rather upon the ground that the fact sought to be controverted was not the guilt of the prisoners, but whether they had consented to their removal for a long distance from the place of their arrest.

We have, on a former occasion, considered what is a “criminal matter” with reference to summary convictions and orders, and the observations then made are applicable to proceedings by *habeas corpus*(k).

But even in cases within 56 Geo. 3, c. 100, it must not

(j) *Ex parte Beeching*, 6 D. & R. 209; 3 D. & R. Mag. Ca. 174; 4 B. & C. 136.

(k) *Ante*, p. 109—113, and cases there cited.



be supposed that all statements appearing upon the return may be contradicted. There are certain questions which are wholly and exclusively within the province of the tribunal from which the commitment issued; they cannot be opened again before another tribunal, unless it be by appeal to quarter sessions or on a case stated (*l*). Such, for instance, is the weight of evidence, the innocence or guilt of the defendant, the adjudication of contempt, and the finding of those facts which are referred by statute to the decision of the magistrates(*m*). No other Court (except the Court of Quarter Sessions on appeal) is competent to re-investigate these matters, and the rule is the same whether the proceeding be brought before it on return to *habeas corpus* or *certiorari*, or in an action against magistrates(*n*). On the other hand, there are certain extrinsic and collateral matters which do not fall within the above category, and which may be controverted by affidavit upon return made to a *habeas corpus* under 56 Geo. 3, c. 100. A few illustrations of this doctrine may be useful. Thus, in the preceding case, it will be seen that *Abbott*, C. J., rested his decision that affidavits were admissible mainly upon the ground that they were not offered for the purpose of showing the innocence of the defendants, but only that they were not taken to Rochester after their arrest with their own consent. "I think the truth of the return *in that respect*," said the learned judge, "may be controverted." In a more recent case(*o*), in which the Court refused to allow affidavits to be used for the purpose of contradicting

(*l*) *Ante*, p. 126.

(*m*) Conclusiveness of finding that a place is a highway; *Mould v. Williams*, 5 Q. B. 469. That a conservatory is not "an erection," within 25 & 26 Vict. c. 102, s. 75; *St. George's Vestry v. Sparrow*, 33 L. J., M. C. 118; *Williams v. Adams*, 2 B. & S. 312; 31 L. J., M. C. 109.

(*n*) See *post*, "Certiorari," and *Dimes' case*, 14 Q. B. 554.

(*o*) *Re Clarke*, 2 Q. B. 619, in

which the commitment was for a contempt in not putting in an answer in the Court of the Master of the Rolls. The same point was decided in *Re Dimes*, 14 Q. B. 554, in which the Court also refused to grant time for the purpose of disclosing matters not apparent on the return, unless the nature of the facts to be sworn to was suggested, and it appeared that such affidavits would be available.

statements made in the order of a Court of competent jurisdiction, *Patteson*, J., said, "All that the Courts have permitted has been to allege a collateral extrinsic fact, confessing and avoiding, as it were, the disputed order. Here the object proposed is to contradict it, and there is no instance of such an attempt having been yielded to. *Brittain v. Kinnaird*(*o*) shows that a fact directly stated on a conviction is not to be controverted. Every order must show facts sufficient to give a jurisdiction, but the facts if so shown are not to be contested (*p*). In *R. v. The Justices of Somersetshire* (*q*), and other cases of the same class, no attempt was made to raise an objection on the proceedings themselves, but facts collateral to them were added to show want of jurisdiction." Accordingly, where the return alleged that the Court of Jersey had jurisdiction to try and punish the offence, and that the sentence was unreversed, the Court of Queen's Bench assumed it to be valid, and would not allow affidavits to be used in order to show that there was no jurisdiction to pass the sentence in question(*r*), or that the Court had acted inconsistently with the law of Jersey(*s*); and where, upon an indictment charging felony committed within the jurisdiction of the Central Criminal Court, a prisoner, after having pleaded not guilty, was tried, convicted and sentenced to imprisonment, and a writ of *habeas corpus* was applied for upon an affidavit showing that the offence was not committed within the jurisdiction as alleged, the record was held to be an estoppel, and the writ was refused(*t*). So the Courts have refused to inquire upon affidavit into the

(*o*) 1 B. & B. 432.

(*p*) *Quære* if this would now be so held, and if the above cases would now be fully supported, if the facts contested were essential to jurisdiction? See *post*, pp. 400, 431.

(*q*) 5 B. & C. 816.

(*r*) *Brenan's case*, 10 Q. B. 492; *Crawford's case*, 13 *Id.* 613.

(*s*) *Carus Wilson's case*, 7 Q. B. 984.

(*t*) *Ex parte Newton*, 16 C. B. 97;

24 L. J., C. P. 148, S. C.; and see, to same effect, *Ex parte Smith*, 3 H. & N. 227; L. J., M. C. 186. It was said by the Court in *Newton's case*, that it must be taken to have been proved at the trial that the offence was committed within the jurisdiction as alleged; and, moreover, that the only remedy was to obtain the leave of the Attorney-General to issue a writ of error, *coram nobis*.

merits of a commitment by the House of Commons for a contempt, although the case might be one within 56 Geo. 3, c. 100(u), or into the facts alleged in articles of the peace exhibited against the defendant, and upon which he was afterwards committed(x). On the last occasion *Littledale, J.*, said, "The facts set forth in the return are, that articles of the peace were exhibited, and that upon those articles the sessions made an order and afterwards issued a warrant of commitment. These facts may be controverted."

It has been lately held that the summary remedy provided by the stat. 5 & 6 Will. 4, c. 76, s. 60, of committing to gaol town clerks or other officers appointed by a town council who wilfully refuse to account or deliver up books, &c. to the council, is in the nature of civil process, and where the return to a *habeas corpus* stated that the prisoner was detained under such process, he was allowed to show by affidavit that he was originally arrested on a Sunday(y). Lord *Campbell, C. J.*, said, "Although the return is good on its face, it is competent to show by affidavit the fact that the arrest took place on a Sunday. If such a course were not allowed, that or any other privilege from arrest would be wholly unavailing, as the fact upon which it rests would not appear upon the return." So where a judgment for debt had been obtained in a County Court against a defendant, who, as one of the Queen's priests in ordinary, was privileged from arrest on civil process, and a judgment summons having issued against him under sect. 99 of 9 & 10 Vict. c. 95, to which he did not appear, the judge committed him for thirty-five days, the Court of Common Pleas held that the commitment was in the nature of a qualified execution, and not of a punishment for contempt, and therefore that

(u) *R. v. Sheriff of Middlesex*, 11 A. & E. 273.

609.

(y) *Ex parte Eggington*, 2 El. &

(x) *R. v. Dunn*, 12 A. & E. 599, Bl. 717.

he was entitled to be discharged by reason of his privilege, and further that the proper mode of obtaining his discharge was by *habeas corpus* to one of the superior Courts; and that his privilege from arrest might be shown by affidavit (z).

Want or excess  
of jurisdiction.

Whether the case is one at common law or under the stat. of Car. 2, or of Geo. 3, it appears that affidavits are admissible to show a *want or excess of jurisdiction*, although they may directly contradict facts stated in the return, which, if true, would show jurisdiction and no excess of it. The rule now appears to be the same as that which is applied to proceedings by *certiorari*, where want or excess of jurisdiction may be shown by affidavit as ground for quashing a conviction or order (a); and it is only reasonable that a person should not be detained in custody on a conviction which would be quashed if brought before the Court in another form. It will be observed that this privilege is not within the mischief pointed out by *Abbott*, C. J., in *Ex parte Beeching* (b). It does not try the guilt or innocence of the defendant on affidavit, nor does it impugn the rule, that matters on which justices acting within their jurisdiction decide shall be held to be conclusive if found by them, but on the contrary it is a consequence of the salutary maxim, that no judge by misstating facts shall give himself jurisdiction (c). And accordingly, in *Ex parte Baker* (d), where a return to a *habeas corpus* set forth a commitment under the Master and Servants Act (4 Geo. 4, c. 34), affidavits were used to show a former conviction for the same offence. And, on a conviction under the same act, affidavits were admitted

(z) *Ex parte Dakins*, 16 C. B. 77; 24 L. J., C. P. 131, S. C.; *George v. Somers*, 16 C. B. 539.

(a) *Post*, p. 431.

(b) *Ante*, p. 395.

(c) See *R. v. Bolton*, 1 Q. B. 66; *R. v. Numeley*, 1 El. Bl. & El. 852; 27 L. J., M. C. 260; *R. v. Hunts-*

*worth*, 33 *Id.* 131.

(d) 2 H. & N. 219; 26 L. J., M. C. 155; *Bramwell, B., dubitante*; and see *Re Thompson*, 6 H. & N. 193; 30 L. L., M. C. 19; and *Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J. M. C. 152.

to show that there was no evidence before the justice of such facts as were essential to the exercise of his jurisdiction, *e.g.*, the contract to serve(*e*). But if there is any evidence to justify the finding, the Courts will not interfere.

The result of the decisions upon this question may be briefly stated thus:—If the fact found be one essential to jurisdiction, or on which jurisdiction depends, it may be shown that there was no evidence before the justices to warrant the finding, but if the fact found was merely a fact in the case and a part of it, jurisdiction having attached, their finding is not, as a general rule, reviewable on affidavit or in any manner, except on appeal, or on a case reserved(*f*).

After the return is put in and read, it is considered as filed, but the Court may still amend it(*g*), although the commitment cannot be amended(*h*). Amending return.

If the defect be not on the face of the commitment, but in the conviction, the defendant, besides a writ of *habeas corpus* to bring up the warrant, must in the Queen's Bench likewise sue out a *certiorari* directed to the convicting magistrate,—or to the sessions, if the conviction has been filed there,—to return the conviction into the Court above(*i*). This is also the only proceeding to be adopted where the defendant is not in custody, but wishes to obtain an examination of the conviction by the superior Court; which leads us in the next place to point out succinctly the mode of obtaining and proceeding upon that writ. When *certiorari* also necessary.

(*e*) *Re Bailey and Collier*, 3 E. & B. 607; 23 L. J., M. C. 161; 18 Jur. 930; and see 1 Smith's L. C. (5th ed.), 675.

(*f*) See *R. v. Huntsworth*, 33 L. J., M. C. 131; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; *R. v. Blackburn*, *Id.* 41; *Backhouse v. Bishopwearmouth*, 9 C. B., N. S. 315; 30 L. J., M. C. 118; *Re Batkin*, 25 *Id.* 126.

(*g*) *Canadian Prisoners' case*, *nom.*

*Re Watson*, 9 A. & E. 731, *nom. Re Batcheldor*, 1 P. & D. 516, S. C. See also *Re Clarke*, 2 Q. B. 619.

(*h*) *R. v. Catherall*, Fitz-Gibb. 266. See *R. v. Turk*, 10 Q. B. 540.

(*i*) *Re Allison*, 10 Exch. 661; 18 Jur. 1055, S. C.; *ante*, p. 387, n. (*f*). If in any Court, other than the Queen's Bench, the conviction may be brought before the Court by affidavit.

## SECT. 2.—Of the Removal of the Conviction by *Certiorari*.

<p>1. <i>Where grantable</i> ..... 402</p> <p>2. <i>No Writ of Error on Convictions</i> ..... <i>id.</i></p> <p>3. <i>Of Common Right</i> ..... 403</p> <p>4. <i>Not taken away by Implication</i> ..... <i>id.</i></p> <p>5. <i>Only by express Words</i> .... 404</p> <p>6. <i>Not taken away from Prosecutor</i> ..... 409</p> <p>7. <i>Not taken away where there is Want of Jurisdiction or where there is Fraud</i>..... 410</p>	<p>8. <i>When necessary to remove Conviction</i> ..... 410</p> <p>9. <i>Manner of obtaining at Suit of Crown</i>..... 411</p> <p>10. <i>By Attorney-General, ex officio</i> ..... <i>id.</i></p> <p>11. <i>By Private Prosecutor</i> .... 412</p> <p>12. <i>At the Suit of Defendant</i> .. <i>id.</i></p> <p>13. <i>Rule must state Objections</i>.. 413</p> <p>14. <i>Where suspended by Appeal</i> <i>id.</i></p>
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Where grantable.

The *certiorari* is a writ issuing out of the Crown Office in the name of the king, or queen regnant, and tested by the chief justice (*k*), which the Court of Queen's Bench, by virtue of its superintending authority over all Courts of inferior criminal jurisdiction in the kingdom, has power to award, for the purpose of procuring an inspection of their proceedings (*l*).

No writ of error.

No writ of error lies on summary convictions (*m*); and

(*k*) See Appendix, Bac. Ab. 559.

(*l*) As no *certiorari* issues out of the Court of Exchequer or Common Pleas, a conviction is properly brought before it, if a copy thereof is verified by affidavit; *Ex parte Allison*, 10 Exch. 561. The proceeding removed must be of a judicial character, and it has been held that a licence for the sale of beer granted by the solicitor of excise is not a judicial act, so as to be removable. A rule obtained on *certiorari* to quash such licence was discharged with costs, and the licence was sent back by *procedendo*; *R. v. Overseers of Salford*, 21 L. J., (N. S.) M. C. 223; and see *R. v. Aberdare Canal Company*, 14 Q. B. 854. Objection to an order of justices appointing overseers must be taken by appeal, not on *certiorari*; *Re Overseers of Pudding Norton*, 33 L. J., M. C. 136. An adjudication, under the Lands Clauses and Railway Clauses Consolidation Acts,

1845, of the sum (below 50*l.*) to be paid by a railway company to a party whose lands have been injuriously affected, is an order within 11 & 12 Vict. c. 43, and may be brought up by *certiorari* to be quashed, if the complaint on which it is founded was made more than six calendar months after the cause of complaint arose; *In re Edmundson*, 17 Q. B. 67; and see *R. v. Poor Law Commissioners*, 8 A. & E. 54; *R. v. JJ. Yorksh.*, 7 *Id.* 583; *Ricardo v. Maidenhead Board of Health*, 2 H. & N. 257; 27 L. J., M. C. 73. In order to maintain an action, it is not necessary to quash a warrant, issued for the apprehension of a person to answer a complaint; 11 & 12 Vict. c. 41, s. 2; *Ex parte Gill*, Q. B., November 8th, 1855, MS.

(*m*) *R. v. Leighton*, Fort. 173; *R. v. Lomas*, Comb. 297; Dalt. c. 195. See *R. v. JJ. Carnarvon*, 4 B. & Ald. 86.

therefore the writ of *certiorari* is the only mode, by which a revision of these proceedings by the superior Court can be obtained.

It requires no special law to authorize this writ; for it is a consequence of all inferior jurisdictions of record to have their proceedings removable, for the purpose of being examined by the Court of Queen's Bench (*n*). In this respect, the proceeding by *certiorari* differs from the right of *appeal*; for, whereas the latter does not exist, unless created by express provision,—the other lies of course, unless expressly taken away by statute (*o*). Of common right.

The practice of taking away the *certiorari* by statute, which Lord *Kenyon* thought had become too frequent, did not begin to prevail till the beginning of the reign of William the Third,—not long after the introduction of appeals to the sessions,—which, we have before observed, came into general use towards the latter end of the reign of Charles the Second (*p*).

The power of granting a *certiorari* is considered as so beneficial to the subject, that it is not allowed to be abridged by any thing short of an express statutory prohibition (*q*). It is not, therefore, prevented by the words of the statute giving the right of *appeal* (*r*), or empowering the justices to hear and finally determine (*s*); the effect of that expression being only to make the justices' determination final as to matters of fact (*t*). Not taken away by implication.

(*n*) Per Holt, C. J., 1 Ld. Raym. 469; and see *R. v. The Manchester and Leeds Railway Company*, 8 A. & E. 413.

(*o*) *R. v. Hanson*, 4 B. & Ald. 521, per Abbott, C. J.; *R. v. Cashiobury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485; and see *ante*, p. 341, *et seq.*

(*p*) The *certiorari* is taken away by the Criminal Law Consolidation Acts (24 & 25 Vict. c. 96, s. 111, and c. 97, s. 69).

(*q*) A strong instance of the maxim that the authority of the Court of Queen's Bench to issue a *certiorari*

for the removal of inferior proceedings can only be retrenched by very positive and express words in an act of parliament, occurs in a case cited by Lord Holt, 1 Ld. Raym. 469, 580, upon the construction of 13 Eliz. c. 9, relating to the power of commissioners of sewers. The case is reported in 1 Mod. 44.

(*r*) *R. v. Blathwayt*, 15 L. J. M. C. 48, 92.

(*s*) 2 Hawk. P. C. c. 27, s. 23.

(*t*) 3 Mod. 95. Where, by a local act, it was declared that no proceedings in pursuance of the act should

Cannot be  
taken away but  
by express  
words.

The principle, that the *certiorari* cannot be taken away virtually or by inference, but by express words alone, is clearly evinced by the construction that has been put upon the statute 22 Car. 2, c. 1, s. 6, the first act which directs an appeal from the conviction of justices of the peace out of sessions. By that act the defendant is empowered to appeal to the judgment of the justices of the peace in their sessions, and may have his trial by a jury there; then follow these words: "and *no other Court* whatsoever shall intermeddle with any cause or causes of appeal upon this act; but they shall be *finally determined* in the quarter sessions only." Notwithstanding this clause, it has been resolved, that, after an appeal to the sessions, and a trial, verdict and judgment there, a *certiorari* might issue at the suit of the defendant; for, the Court said, "a *certiorari* does not go to try the merits of the question, but to see whether the limited jurisdiction has exceeded its bounds. The jurisdiction of the Queen's Bench is not taken away, unless there be express words to take it away. This is a settled point" (*u*). Again, it has been held, that the clause in the act of 2 Car. 2, c. 23, s. 36, that "no writ or writs of *certiorari* shall supersede execution upon any order of justices made in pursuance of that act, but that execution may be had thereon, notwithstanding such writ," does not prevent the removal of such proceedings by *certiorari*, though the execution of them is not thereby suspended (*x*).

The statute 36 Geo. 3, c. 60, s. 9, also, which gives an appeal to the sessions from the convictions of justices under that act, declares that the determination of the

be removed by *certiorari*, and this clause followed immediately after several others relating to summary proceedings before justices, and was succeeded by a clause giving an appeal to quarter sessions for parties aggrieved by the decision of commissioners under the act: it was held, on the construction of the act,

that the clause taking away the *certiorari* applied to all proceedings under the act, whether on appeal or otherwise; *R. v. JJ. Lindsey*, 3 D. & L. 101.

(*u*) *R. v. Morley and others*, 2 Burr. 1041.

(*x*) *Anon.* 1 Barn. 245.



justices there shall be *final*. But this was held not to prevent the defendant, after an appeal tried and determined at the sessions, from suing forth a *certiorari* to remove the proceedings. Lord *Kenyon*, upon that occasion, said, that it would be against all authority to hold that the *certiorari* is virtually taken away; for that, being a beneficial writ for the subject, cannot be taken away without express words; and it was much to be lamented, in a variety of cases, that it was taken away at all(y).

Neither is a general reference to offences created by a former act, in which the *certiorari* is taken away, sufficient to take it away in the subsequent one; but, for that purpose, the prohibitory clause must be either repeated specially, or understood by necessary intendment. Thus, the statute 13 Geo. 1, c. 23, for regulating woollen manufacture, creates special penalties for offences therein specified, and gives an appeal to the sessions, but takes away the *certiorari*, both as to the order of justices out of sessions, and also as to the order of sessions upon appeal. Afterwards the 17 Geo. 2, c. 5, s. 5 (the former Vagrant Act), enacted, "that all persons convicted of offences under the above-mentioned act of 13 Geo. 1, c. 23, should be deemed incorrigible rogues;" and sects. 7 and 9 empowered the justice to commit to the next Court of Quarter Sessions, which might inflict a term of imprisonment not exceeding two years. The latter statute (17 Geo. 2, c. 5) had no provision relative to the *certiorari*(z). Upon a motion for a writ of *certiorari*, at the suit of a defendant, to remove *two* several instruments, viz. a conviction by a justice for an offence against the act 13 Geo. 1, and likewise an order of sessions made on commitment of the defendant to the sessions, pursuant to 17 Geo. 2, for *another* offence under the same act of

Not by general reference to former act.

(y) *R. v. Jukes*, 8 T. R. 542, 544; 4 M. & S. 508.

see also *Hartley v. Hooke*, Cowp. 523; *R. v. Hube*, 5 T. R. 542; *R. v. Seton*, 7 T. R. 373; and *R. v. Wadley*,

(z) The present Vagrant Act, 5 Geo. 4, c. 83, is also silent as to the writ of *certiorari*.

13 Geo. 1,—the Court held, that though the *certiorari* could not issue as to the first, being wholly under 13 Geo. 1, by which the *certiorari* was taken away,—yet that the second was removable, being a proceeding under 17 Geo. 2, which contained no express exclusion of the *certiorari*. And to that extent the writ was granted (a).

So, where a statute takes away the *certiorari*, upon a conviction for any offence under a former act, which last-mentioned act extends the provisions of an antecedent one, *in pari materiâ*, but does not, in express terms, embody a section relating to the particular offence of which a party is convicted, the *certiorari* is not taken away, by inference, from the party convicted under the antecedent act. Thus, a silk-manufacturer had been convicted under the statute 12 Geo. 1, c. 34, s. 3, for paying one of his workmen in goods, instead of money, as wages for his labour. The sessions, on appeal, confirmed the conviction; and a rule *nisi* having been obtained to remove the order of sessions by *certiorari*, for the purpose of being quashed, the question was, whether the *certiorari* was taken away by 17 Geo. 3, c. 56, s. 22. The 12 Geo. 1, c. 34, s. 3, regulates the payment of workmen in the woollen and certain other trades, and prohibits payment of their wages in goods, under certain penalties. The 22 Geo. 2, c. 27, s. 12, recites the last-mentioned clause, and extends its provisions to the silk trade, in which the defendant was engaged; but that act contains many other clauses, creating several new offences. The 17 Geo. 3, c. 56, s. 22, enacts, among other things, “that no order made touching or concerning any of the matters contained in this act, or any proceedings to be had touching the conviction of any offender or offenders against the 22 Geo. 2, c. 27, shall be removed by *certiorari* into the King’s Bench.” The Court said, upon referring to the different acts of parliament which have

(a) *R. v. Terret*, 2 T. R. 734.

been mentioned, "It appears to us, that the 17 Geo. 3, c. 56, s. 22, cannot be construed to take away the *certiorari* in this case. That statute only takes away the *certiorari* in cases of conviction under the 22 Geo. 2, c. 27, s. 12. The offence in this case is an offence against the 12 Geo. 1, c. 34, the third section of which regulates the payment of wages in money instead of goods; but the 22 Geo. 2 creates several new offences, and extends the provisions of 12 Geo. 1 to other manufactures; but it does not, in express terms, embody that section which regards the payment of wages. The 22 Geo. 2 creates specific offences, which are not punishable under the 12 Geo. 1. Then the question is, whether, by the 22 Geo. 2, which extends the 12 Geo. 1 to other branches of manufacture, an offence committed against the latter can be considered as an offence against the former. We are of opinion that, as the 22 Geo. 2 makes a variety of new substantive offences in addition to those created by the 12 Geo. 1, the statute 17 Geo. 3, which only recites the different provisions of the 22 Geo. 2, does not attach to the 12 Geo. 1, and, therefore, the rule for a *certiorari* must be made absolute" (b).

But where a statute, after referring to a former one, expressly declares, that all the powers and provisions therein contained shall be incorporated in the present act, —and one of the provisions in the former act takes away the *certiorari*,—it will be also taken away from a party convicted under the latter act. Thus, the stat. 50 Geo. 3, c. 73, after reciting the 31 Geo. 2, c. 29, the 3 Geo. 3, c. 6, and the 13 Geo. 3, made certain amendments in the laws then in force respecting the trade of bakers (c), and, by the fifth section thereof, all powers given by the recited statutes upon the same subject were incorporated, except those altered by that statute. The 31 Geo. 2,

When taken away.

(b) *R. v. Kaye*, 1 D. & R. 436; 1 D. & R. Mag. Ca. 114.

(c) See now 1 & 2 Geo. 4, c. 50, and 3 Geo. 4, c. cvi.

c. 29, ss. 36 and 37, respectively take away the writ of *certiorari*, and give an appeal to the sessions. It was held, that the 50 Geo. 3, c. 73, s. 5, incorporated those sections, and that, on a conviction under the 50 Geo. 3, the *certiorari* was taken away and an appeal given (*d*). We have seen that by stat. 12 & 13 Vict. c. 45, s. 9, the decision of quarter sessions upon the hearing of any appeal as to certain matters is declared to be final, and not liable to be reviewed by *certiorari* or mandamus, or otherwise (*e*).

Where a statute takes away the *certiorari*, upon a summary conviction for a certain offence, but prohibits the magistrate from convicting summarily where the offence partakes of a felonious character, the Court will not grant a *certiorari*, upon a suggestion that the magistrate has exceeded his jurisdiction; unless such excess of jurisdiction appears on the face of the conviction, or the evidence shows an intention of the party to commit a felony. Thus, by the now repealed stat. 9 Geo. 4, c. 31, s. 27 (*f*), two justices might convict summarily of a common assault, and a conviction or acquittal before them barred further proceedings; but, by section 29, they were precluded from exercising this jurisdiction, if they found the assault to have been accompanied by any attempt to commit felony, and, by section 36, no such conviction could be removed by *certiorari*. Two justices convicted summarily, as of a common assault, where it appeared by the deposition, that the defendant had laid hands upon the prosecutor in an indecent manner, but without violence. A *certiorari* being moved for, on the ground that the offence, if committed, was accompanied by a felonious attempt, and therefore within section 29,—the Court of Queen's Bench refused to interfere, inasmuch as no excess of jurisdiction appeared on the face of the con-

(*d*) *R. v. The Mayor of Liverpool*,  
3 D. & R. 275; 2 D. & R. Mag.  
Ca. 4.

(*e*) *Ante*, p. 377.  
(*f*) Sect. 42 of 24 & 25 Vict.  
c. 100, is now substituted.

viction, and the evidence (of which the magistrates were the judges) did not clearly show an intention to *commit felony* (g); and where the magistrates convicted a man of an aggravated assault on a woman under the same statute (as extended by statute 16 & 17 Vict. c. 30 (h)), but the only evidence was that of the woman who swore to a rape, the Court of Queen's Bench refused to interfere on an application for a *habeas corpus* (i), and the Court of Exchequer were equally divided on the point (j).

But, even where a statute in express terms declares that the proceedings shall not be removed by *certiorari*, this does not prevent its issuing at the suit of the *prosecutor*; for, to restrain the prerogative of the crown in this particular, there must either be express words for that purpose, or an intention manifestly appearing upon the act, that the crown, as well as the subject, shall be prohibited from removing the proceedings (k). This is a reasonable construction of a provision, the object of which is only to prevent delay, which cannot be the motive of the prosecutor. And it is, in fact, beneficial to the subject, that this privilege should exist on the part of the crown; for, in several instances, where the *certiorari* is taken away from the defendant, the Attorney-General has assisted defendants, where a doubtful judgment has been given below, to have their cases reconsidered by applying for the *certiorari* on the part of the crown (l). This privilege is extended to any private person prosecuting, though he may have become nominally the defendant in a subsequent stage of the proceedings, as if the conviction has been quashed at the

Not taken  
away from pro-  
secutor.

(g) *Anon.* 1 B. & Adol. 382.

(h) Repealed, so far as it relates to this subject, by 24 & 25 Vict. c. 95, which repeals the 1st sect. See 24 & 25 Vict. c. 100, s. 43.

(i) *Re Thompson*, 15 C. B., N. S. 288; 30 L. J., M. C. 20, n. (3).

(j) *Re Thompson*, 30 L. J., M. C. 19; *Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J., M. C. 152.

(k) *R. v. Allen*, 15 East, 333, 341, 342. See 2 Chit. Rep. 186.

(l) 15 East, 337.

When required  
for removal of  
conviction, &c.

Not taken  
away where  
there is want  
of jurisdiction  
or fraud.

sessions, with costs to be paid by the prosecutor, and he afterwards seeks to quash the order of sessions (*m*). We have already considered when it is necessary to bring the conviction or order before the Court, and not to rely solely on the commitment (*n*).

So even express words taking away the *certiorari* are inapplicable where there is a want or excess of jurisdiction (*o*), which may be shown by affidavit, although the conviction may be good *ex facie* (*p*), or where the Court has been illegally constituted (*q*), or the conviction has been obtained by fraud (*r*). So the writ was allowed to issue, notwithstanding there were express words taking it away, where the magistrates convicted of an assault,

(*m*) *Cov. Pr.* 65; *R. v. Farewell*, 1 East, 305; *R. v. Berkeley*, 1 Ken. 80; *R. v. Bodenham*, 1 Cowp. 78; *R. v. Boulton*, 4 A. & E. 498; *R. v. Spencer*, 9 *Id.* 485.

(*n*) *Ante*, p. 390.

(*o*) *R. v. The Sheffield Railway Company*, 11 A. & E. 194; *R. v. Rose*, 1 Jur., N. S. 802; *R. v. Boulton*, 4 A. & E. 498; 6 N. & M. 26, S. C.; *Baylis v. Strickland*, 1 M. & G. 596; *R. v. JJ. St. Alban's*, 17 Jur. 531; 22 Law J., M. C. 142, S. C.; *R. v. Berkeley*, 1 Lord Ken. Rep. 99; *R. v. JJ. Derbysh.*, 2 *Id.* 209; *R. v. JJ. Somersetsh.*, 5 B. & C. 816; *R. v. West Riding of Yorksh.*, 5 T. R. 629; *R. v. Fowler*, 1 A. & E. 836. The following objections have been held not to go to the jurisdiction, viz.: that the defendant was convicted on a summons giving an unreasonably short notice, and in the absence of himself or any one on his behalf, except an attorney authorized to apply only for an adjournment, and that the conviction took place without proof of service of the summons, the justices having jurisdiction over the subject-matter; *Ex parte Hopwood*, 15 Q. B. 121. So where costs were erroneously ordered to be paid to the clerk of commissioners, instead of to the clerk of the peace, it was held to be a defect in form only;

*R. v. Binney*, 1 El. & Bl. 810; 22 L. J. (N. S.) M. C. 127; 17 Jur. 854, S. C. So where a magistrate took part in the decision, having been present during only a part of the discussion; *R. v. Chester and Holyhead Railway Company*, Q. B., Jan. 14, 1856; and see Index tit. "Jurisdiction." In a late case Mr. Justice Crompton said, "Now that justices can be compelled to grant cases for the opinion of the superior Courts, it may be doubted whether we ought to grant a *certiorari*, unless we see that they have really acted without jurisdiction;" *R. v. Lundie*, 31 L. J., M. C. 157, 160; see *R. v. Hodgson*, 12 W. R. 423. If a summons is taken out under one statute and the defendant is convicted under another, it is an excess of jurisdiction, and a *certiorari* will be granted; *R. v. Brickhall*, 33 L. J., M. C. 156; *ante*, p. 65.

(*p*) *R. v. Bolton*, 1 Q. B. 66; *Re Bailey and Collier*, 3 El. & Bl. 607; and see *ante*, p. 400; and *post*, p. 431.

(*q*) *R. v. Cheltenham Commissioners*, 1 Q. B. 467.

(*r*) *R. v. Gillyard*, 12 Q. B. 527; *Tarry v. Newman*, 15 M. & W. 653; and see further, as to the effect of fraud on judicial proceedings, *R. v. Alleyne*, 4 El. & Bl. 186; 1 Jur., N. S. 869; *Shedden v. Patrick*, 1 Macqueen, H. of L. Cas. 535.

although the complainant asked only for sureties to be found to keep the peace(*s*). And if an order of sessions be brought up to be enforced under 12 & 13 Vict. c. 45, s. 18, it may be objected to, although the *certiorari* is taken away (*t*).

When a writ of *certiorari* is applied for, it is either at the instance of the crown, or of the defendant.

Manner of obtaining at the suit of the crown.

First, where the application is at the suit of the crown, it is either by the Attorney-General *ex officio*, or by the private prosecutor. In both these cases alike it issues of course, and without assigning any grounds(*u*). Neither are the restrictions and limitations, as to the time of suing out the *certiorari*,—nor other regulations, as to notice, recognizances, and the like,—attached to an application by the crown or prosecutor(*x*). Besides the authority of practice, it has been decided by the Court, upon a review of the subject, that the general words of a statute restraining the issuing of writs of *certiorari* do not apply to prosecutors(*y*).

There is this distinction between an application by the Attorney-General officially, and that by a private prosecutor, viz. that in the former, the writ is of absolute right; but, in the case of an individual prosecutor, though the writ issues of course, yet, upon cause shown, it may be suspended (*z*).

By Attorney-General *ex officio*.

The right of the Attorney-General to have the writ, as of course, is not confined to cases, where it is sued out on behalf of the prosecution; but it is established practice of the Crown Office, that the Attorney-General is entitled to it absolutely in all cases. And, though a statute ex-

(*s*) *R. v. Deny and others*, 2 L. M. & P. 230; 20 L. J., M. C. 189, S. C.

(*t*) *R. v. Hellier*, 17 Q. B. 229; *R. v. Hyde*, 2 El. & Bl. 952; 21 L. J., M. C. 94; 16 Jur. 637, S. C.

(*u*) 2 T. R. 89; 2 Hawk. P. C. c. 27, s. 27; *R. v. Boulbee*, 6 N. &

M. 26; 4 A. & E. 498, S. C.

(*x*) 1 East, 298, 303, n. (*d*); *R. v. Farewell*, 2 Str. 1209; and S. C. 1 East, 305, from a MS. note. See also 16 & 17 Vict. c. 30, s. 8.

(*y*) Per Lord Kenyon, 1 East, 305.

(*z*) 2 Hawk. P. C. c. 27, s. 27, n. (2); 4 Burr. 2458.

pressly takes away the *certiorari* from the defendant, or he cannot have it without laying a special ground by affidavit, yet the crown,—if the defendant be one of its officers, or if, for any reason, it take up his defence,—may have a *certiorari* in the name of the defendant, without laying any special ground (*a*), and without regard to any restrictions imposed in ordinary cases, as to the time of applying for it (*b*). Where this is done, the Attorney-General, by his signature, authorizes the defendant's attorney to apply to the Court, or to a judge in vacation, and a rule is thereupon drawn up of course. And no recognizance is necessary upon a writ so obtained.

By private  
prosecutor.

The writ for the private prosecutor is obtained, if in term time, by counsel's signature to a motion, which, being handed to the officers of the Crown Office, a rule is drawn up for issuing the writ, which is thereupon given out from the Crown Office. In vacation, application is made to a judge of the Court of Queen's Bench at Chambers, and the rule drawn up upon his *fiat*.

At the suit of  
the defendant.

Affidavit.

But though the *certiorari* is demandable of right by the prosecutor, it is discretionary in the Court either to grant or refuse it at the prayer of the defendant (*c*). Some special ground must be laid before the Court by affidavit on moving for the rule (*d*); for where it was moved for, on the ground of the jurisdiction of the justices not appearing on the conviction, and there was no affidavit showing the want of jurisdiction, the application for the *certiorari* was refused (*e*). A slight ground, however,

(*a*) 1 East, 303, n. (*d*); 4 Burr. 2458; *R. v. Stannard*, 4 T. R. 161; see also *R. v. Thomas*, 4 M. & S. 442, where Lord Ellenborough, C. J., said, "I have been enquiring of the officer if the practice is as I supposed it to be, and find that the Attorney-General has not the power of himself to issue a *certiorari*, but must make application to this Court; but, upon such his application being indorsed, it is a matter of course with the

Court to grant a *certiorari*." See also 2 Chit. Rep. 136.

(*b*) *R. v. James*, M. 26 Geo. 3; 1 East, 303, n. (*d*).

(*c*) 2 Hawk. P. C. c. 27, s. 27; see also *R. v. JJ. Salop*, 29 L. J., M. C. 39; *R. v. Pudding Norton*, 33 *Id.* 136.

(*d*) 2 T. R. 90.

(*e*) *R. v. Long*, 1 M. & R. 139; 1 M. & R. Mag. Ca. 52; and see *R. v. Bolton*, 1 Q. B. 66.



will be sufficient for applying for the writ; but there must be some (*f*).

In vacation, it may be obtained by a judge's order, upon special application supported by affidavit. The rule is sometimes absolute in the first instance (*g*), but it is usual to grant it *nisi* only, and it is said to be better also at Chambers to issue a summons to show cause why the writ should not be granted (*h*).

Rule absolute  
in first instance.

In one case, the Court granted the writ of *certiorari* at once, where if a rule had been granted the six months from the conviction would have elapsed, so that no action could have been brought against the justices (*i*).

If a rule *nisi* only be granted in the first instance, yet the argument on such rule generally decides the case, and if it be made absolute after argument, the conviction is quashed almost as a matter of course when it is afterwards brought up on the *certiorari*.

The rule for the *certiorari* must specify the omission or mistake objected to in the conviction, order or judgment which it is sought to remove (*k*).

Rule must  
state objec-  
tions.

By a rule of Court, Pasc. 1 Ann. B. R. (*l*), no *certiorari* shall be granted to remove orders of justices from which the law has given an appeal to the sessions, before the matter be determined on the appeal, or the time for

Where sus-  
pended by  
appeal.

(*f*) Per Buller, J., 2 T. R. 90. The rule is said to have obtained ever since the time of Charles II., *Id.*; and see *R. v. Abbott*, Doug. 553, n. It appears, says Mr. J. Buller, 2 T. R. 80, from a case preserved in Sir E. Northey's notes, M. 25 Car. 2, that it was then held as clear law that a *certiorari* ought not to be granted in vacation, but in open Court, and upon a ground shown. It is now, however, the practice to let the writ be sued out in vacation, by a judge's order upon affidavit.

(*g*) *R. v. Spencer*, 8 Dowl. 127; *Symonds v. Dimsdale*, 2 Exch. 533; *semble*, overruling *R. v. Chipping Sodbury*, 3 Nev. & Man. 104; 2 Nev. &

Man. Mag. Ca. 99. Although the prosecutor and justices should have full opportunity of opposing the application, yet it is not necessary to issue a summons, calling upon them to show cause why the writ should not issue; *R. v. Hodgson*, 12 W. R. 423.

(*h*) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98; and see *R. v. Chipping Sodbury*, 3 Nev. & M. 104; and Corner's Crown Practice, p. 72.

(*i*) *Ex parte Houseman*, Q. B. Jan. 15, 1856.

(*k*) 12 & 13 Vict. c. 45, s. 7. See *R. v. Purdey*, 34 L. J., M. C. 4.

(*l*) 1 Salk. 146.

appealing be expired; because it hinders the privilege of appealing.

This rule must have been taken advantage of, upon the motion to file the order, when such motion was made (*m*).

By the interpretation put upon this rule, however, if a right of appeal to the sessions is given to the defendant alone, to be brought within a certain time, he may waive his right, and apply for a *certiorari* before the time for appealing is expired (*n*), unless expressly restricted by the statute (*o*); and the rule applies only where the party in whose favour the order was made seeks to bring it up by *certiorari*, which would prevent the privilege of appealing (*p*).

The only cases, where the issuing of the *certiorari* is suspended by the privilege of appeal, are those in which both parties have that privilege; and then only if a certain time is fixed for bringing the appeal (*q*); for, if only the party applying for the *certiorari* has the right of appealing, he may waive it; and where both are entitled to it, yet if no time be fixed for bringing the appeal, it is no objection to the writ of *certiorari* issuing; for, if it were, the writ might never issue at all; and the rule of Court above mentioned is to be understood in that sense (*r*).

Effect on *certiorari* of an appeal depending.

Where a person had been committed by two justices to the sessions under the Vagrant Act, against which commitment he had appealed, and while that appeal was

(*m*) Per Holt, C. J., 1 Salk. 136. No motion is now made to file the order.

(*n*) *R. v. Harman*, Andr. 343.

(*o*) An instance of such partial restriction of the *certiorari*, though not usual, is found in the statute 12 Geo. 2, c. 28, ss. 5, 6, against excessive gaming,—which, after giving the party grieved an appeal to the sessions, enacts (sect. 6) that “no conviction or judgment shall be re-

movable into any Court of Record at *Westminster* by *certiorari*, or any other writ or process, until such order or other proceeding shall have been first removed to, and judgment and determination made thereon by, the Court of Quarter Sessions.”

(*p*) *R. v. Willats*, 7 Q. B. 516; *R. v. Blathwayt*, 3 D. & R. 542.

(*q*) Andr. 343.

(*r*) *Id. ib.*; and see 2 Str. 991.

depending a *certiorari* had been granted to remove the proceedings; afterwards a rule was obtained to show cause why it should not be quashed. The Court were all of opinion, that no *certiorari* could issue then, and, therefore, that it must be quashed; for the magistrate had committed to the sessions, and the vagrant had appealed; so that both parties had agreed, that there should be an appeal to the sessions; and therefore the *certiorari* ought not to issue till the sessions had determined the case (s).

Where, however, the objection taken to a conviction goes to the jurisdiction of the justices, a *certiorari* may issue, even although the party applying for it has induced the magistrates to state a case for the opinion of a superior Court, under 20 & 21 Vict. c. 43, and although such case is still pending before the Court (t). After case granted.

But, even where there is no objection to the *certiorari* issuing before the time for appealing has expired, yet the Court, in the exercise of its discretion, will refuse to grant it, if, upon the affidavits in support of the application, it appears that the ground alleged for it is more properly the subject of appeal (u); or, if the defendant, before raising the objection to the jurisdiction of the justices, Refused.

(s) *R. v. Sparrow and another*, 2 T. R. 196, n. (a). The practice is different, on an application for a *certiorari* to remove an indictment from the sessions; in which case the application must be made before the trial of the indictment at the sessions; *R. v. Inhabitants of Pennegoes and Machynlleth*, 1 B. & C. 142; 1 D. & R. Mag. Ca. 243; and see, as to the removal of indictments by *certiorari*, 16 & 17 Vict. c. 30, ss. 4-8.

(t) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98; and on *R. v. Sparrow* being cited, Cockburn, C. J., said, "The question whether the justices had jurisdiction is preliminary to any ques-

tion on the merits."

(u) Per Lord Mansfield, *R. v. Whitbread*, Doug. 550. In *R. v. Eaton*, 2 T. R. 90, where the Court at first refused to grant a *certiorari* without some cause shown, it is said that the defendant's counsel then offered an affidavit of the merits, which being read, the *certiorari* was granted. This expression, however, it is presumed, must apply to such facts as appeared upon the face of the conviction; otherwise, they could not furnish a reason for granting the *certiorari*, as they could not be taken notice of upon the conviction being brought up. See *R. v. Hunt*, 2 Chit. Rep. 130.

endeavoured to obtain their decision on the merits (*x*); or, if the objection is one which ought to have been taken at the hearing, instead of being reserved as a ground for quashing the conviction or order after it has been made, *e. g.*, the objection of *res judicata* (*y*).



SECT. 3.—*Of the Time of issuing the Certiorari, and of the Notice, and Recognizance.*

1. Time of issuing .....	416	3. Recognizance .....	420
2. Notice .....	<i>id.</i>	4. Sureties .....	422

There are several statutory regulations concerning the issuing of the writ of *certiorari*, in regard to time, notice and security for costs.

Regulation  
as to time of  
issuing.

In six months.

Notice.

With regard to the *time*, and also the *notice* necessary, it is enacted, by 13 Geo. 2, c. 18, s. 5, "That, for the better preventing vexatious delays and expense occasioned by the suing forth writs of *certiorari* for the removal of convictions, &c., before justices of the peace, no writ of *certiorari* shall thenceforth be granted, issued forth or allowed to remove any conviction, order, &c., made by or before any justice or justices of the peace, or the General Quarter Sessions, unless such *certiorari* shall be moved or applied for within *six* calendar months next after such conviction, order, &c.; and unless it be duly proved upon oath, that the party suing out the same hath given *six* days' notice thereof in writing to the justice or justices, or any two of them (if so many there be), by and before whom such conviction, &c., shall be so made; to the end that such justice, or the parties therein concerned, may show cause against the issuing or granting the said *certiorari*."

(*x*) *R. v. JJ. Salop*, 2 El. & El. 420; 3 N. R. 468; and *ante*, p. 145, 386; 29 L. J., M. C. 39. *et seq.*  
(*y*) *R. v. Harrington*, 12 W. R.

The six calendar months are to be computed from the date of the conviction, if there has been no appeal(*z*). But if an appeal has been heard, then it is sufficient, if the *certiorari* is moved for within six calendar months after the order of sessions confirming the conviction; for, as was observed by Mr. J. *Patteson* in *R. v. Justices of Middlesex(a)*, "if this were otherwise, the party aggrieved would not have his two remedies; for if he were obliged to remove the conviction within six months, he would often lose the opportunity of an appeal on the merits."

The application may be made on the last day of the six months, and where the applicant had left the affidavits with the judge's clerk on the last day but one of the six months, and had done all he could for the purpose of making the application on the next day, but on account of the judge not attending chambers, the application was not heard until after the six months had expired, the writ was allowed to issue(*b*).

The *notice* must be given to the magistrates six days previous to the application for the rule to show cause; and the six days are to be reckoned one day inclusively and the other exclusively(*c*). The notice of such motion must be given to the justices, notwithstanding the order of sessions is made, subject to the opinion of the Court of Queen's Bench on a case to be stated, and the case is afterwards stated and settled by the justices at sessions(*d*). The service of the rule to show cause, though more than six days be given upon it, is not a sufficient compliance with the act(*e*). The notice may be of intention to move

(*z*) *R. v. Boughy*, 4 T. R. 281;

see *R. v. Whitechapel*, 2 Dowl., N. S.

964; *Re Llanbelig*, 15 L. J., M. C.

92; *R. v. Bloxam*, 1 A. & E. 386.

(*a*) *R. v. JJ. Middlesex*, 5 A. & E.

626; and see *R. v. Kaye*, 1 D. & R.

436; *R. v. JJ. Sussex*, 1 M. & S.

631, 734; *R. v. JJ. Hertfordsh.*, 2 D.

& L. 952.

(*b*) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98.

(*c*) *R. v. Goodenough*, 2 A. & E. 463.

(*d*) *R. v. JJ. Sussex*, 1 M. & S.

631, 734.

(*e*) *R. v. JJ. Glamorgansh.*, 5 T.

R. 279.

for a *certiorari* “in six days from the giving of this notice, or as soon after as counsel can be heard” (*f*). But where a notice was given, that the motion would be made “on the first day of term, or as soon after as I can be heard,” —the notice was held irregular, where it was served only on the first day of the term, although not in fact moved for until after the expiration of the six days (*g*).

Where the *certiorari* is to remove an order of sessions, the notice must be served on *two* of the justices *present at the sessions*, by and before whom the conviction was made. For where a notice was served on one justice present at the sessions, and on another not present, the service was held bad (*h*).

It is not sufficient to state in the affidavit of service that the notice was served on two of the justices present at the sessions, but it should be alleged in accordance with the terms of the statute, that it was served upon two of the justices present at the hearing by and before whom the conviction was made (*i*), and it seems that no presumption arises on this head from their names appearing in the caption of the order which it is sought to remove (*k*). A defect in this respect is ground for quashing the writ (*l*), and if the application fails from defective affidavits, it cannot, in general, be renewed (*m*). Affidavits may be used to show that one of the justices described in the affidavit for the *certiorari*, as having been present, took no part in the

(*f*) *R. v. Rose and another*, 3 D. & L. 359.

(*g*) *In re Flounders*, 4 B. & Ad. 865; 3 Nev. & M. 592.

(*h*) *R. v. Rattislaw*, 5 Dowl. 539.

(*i*) *R. v. Cartworth*, 5 Q. B. 201; and see *R. v. JJ. Suffolk*, 21 L. J., M. C. 169; *R. v. Darton*, 2 D. & L. 498.

(*k*) *R. v. Colchester*, 20 L. J., M. C. 203; and see *R. v. JJ. Shrewsbury*, 9 Dowl. 501; *R. v. JJ. Wiltsh.*, *Id.* 524. But see *R. v. Sevenoaks*, 7 Q. B. 136.

(*l*) *R. v. Cartworth*, *supra*. As to time of making application to quash the writ on this ground, see *R. v. Basingstoke*, 6 D. & L. 303; *R. v. Darton*, 2 *Id.* 492; *R. v. Gilberdike*, 5 Q. B. 207; *R. v. Sevenoaks*, 7 *Id.* 136; *R. v. Rattislaw*, 5 Dowl. 539. Enlarging the rule *nisi* by consent will not cure objection to the notice; *R. v. JJ. Shrewsbury*, 11 A. & E. 159; 9 Dowl. 501, S. C.

(*m*) *R. v. Manchester Railway Company*, 8 A. & E. 413.

proceedings(*n*). The want of, or any defect in, such previous notice is, therefore, a good cause to be shown against making the rule absolute(*o*); or even if the rule had been made absolute, and the writ issued, the Court would supersede it, on the ground, that no notice was given previous to the moving for the rule *nisi* (*p*).

The *certiorari* can only be issued at the instance of the party giving notice to the justices(*q*). The notice must therefore state the name of the party intending to apply for the writ(*r*), and should state who that party is(*s*); and on motion for the writ, the Court must be satisfied on the affidavits that the party so named is the one by whom, or on whose behalf, the notice was given and the application is made; the justices must also be identified with those who were served(*t*). And if there is more than one party applying for it, the notice must be given by all; and, therefore, where a notice was signed by only one churchwarden, although it was stated to be "on behalf of the churchwardens and overseers of E.," it was held to be not a sufficient notice by the "party or parties suing forth" the writ, within the statute of 13 Geo. 2, c. 18, s. 5(*u*). But in order to obtain a *certiorari* on behalf of a parish, to remove an order of sessions, a notice to the justices signed by the attorney for the parish,

(*n*) *R. v. JJ. Herefordsh.*, 14 L. J., M. C. 44, n.

(*o*) *R. v. JJ. Glamorgansh.*, 5 T. R. 279.

(*p*) *R. v. Nichols*, 5 T. R. 281; *R. v. Rattislaw*, 5 Dowl. P. C. 539.

(*q*) *R. v. JJ. Kent*, 3 B. & Ad. 250.

(*r*) *R. v. JJ. Lancash.*, 4 B. & Ald. 289, where the Court said, "The notice should be given by the party suing out the writ, and that circumstance should appear upon the face of the notice itself; for the object of it, stated by the statute, is to enable the justices to show cause against the granting the

*certiorari*; and they may show for cause, that the party suing out the writ was a stranger to the county, and not interested in the order. The justices, therefore, ought to have their attention called to the name of the party by the notice itself." See also *R. v. How and others*, 11 A. & E. 159.

(*s*) Cov. Pr. 70.

(*t*) *R. v. JJ. Shrewsbury*, 11 A. & E. 159; 9 Dowl. 501, S. C.; and see *R. v. JJ. Wiltsh.*, 9 Dowl. 524; *R. v. JJ. Lancash.*, 11 A. & E. 144.

(*u*) *R. v. JJ. Cambridgesh.*, 3 B. & Ad. 887.

stating the intention of the parish to apply for such writ, has been held sufficient(*x*).

These restrictions, however, it is to be remembered, do not attach upon applications on behalf of prosecutors, nor upon those made by the Attorney-General officially on account of a defendant(*y*).

Recognizance.

A further condition to be observed, before a *certiorari* can be obtained by the defendant, is that of giving security for costs, &c. This is, in some instances, regulated by particular statutes, as by the former statutes of 5 Ann. c. 14, s. 2, and 16 Geo. 3, c. 30, s. 19, in cases relating to game and to deer: in other cases, the defendant is obliged, before he can have a *certiorari*, to enter into a recognizance to pay the prosecutor his costs and charges(*z*).

This practice is founded upon an extension of the following clause in the stat. 5 Geo. 2, c. 19, s. 1:—  
“Whereas, in many cases where his majesty’s justices of the peace by law are empowered to give or make judgments or orders, great expenses have been occasioned, &c.; and whereas (sect. 2) divers writs of *certiorari* have been procured to remove such judgments or orders into his Majesty’s Court of King’s Bench at Westminster, in hopes thereby to discourage and weary out the parties concerned in such judgments or orders, by great delays or expense: it is therefore enacted, that no *certiorari* shall be allowed to remove any *such* judgment or order, unless the party prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the peace of the county or place, or before the justices in their quarter sessions where such judgment or order shall have been made, or before any judge of the King’s Bench, in the sum of 50*l.*,

(*x*) *R. v. Inhabitants of Abergele*, 5 A. & E. 795; 1 Nev. & P. 235; 1 Nev. & P. Mag. Ca. 66.

(*y*) *Ante*, p. 412, *et seq.*

(*z*) See the Form of a Recognizance, in the Appendix. See *R. v. Hooper*, 1 Chit. 491; *R. v. Harrison*, *Id.* 571.



with condition to prosecute the same at his own costs and charges with effect, without wilful or affected delay, and to pay the party in whose favour such judgment was given, within one month after such judgment or order shall be confirmed, his full taxed costs; and, in case the party shall not enter into such recognizance, or shall not fulfil the conditions, the justices may proceed upon such judgments or orders, as if no such *certiorari* had been granted." The third section directs the recognizance to be certified into the Court of King's Bench, and filed with the *certiorari*, and order or judgment removed; and gives a power of enforcing it by attachment, upon affidavit of non-payment within ten days after demand.

This statute, it will be observed, mentions only *judgments* and *orders*; and on that account seems at one time not to have been understood to apply to convictions; for it appears, by a case which occurred in *Michaelmas* term, 26 Geo. 3(a), that it was not the practice to require a recognizance, on removing convictions; but, as by the practice of the Court no attachment can issue for the costs where there is no recognizance, the Court in the case alluded to declared, that for the future they would not grant a *certiorari*, to remove a conviction, without compelling the party first to enter into a recognizance(b). Accordingly, since that time, the practice has uniformly been to require a recognizance for the allowance of a *certiorari* in all cases of the removal of summary convictions

(a) *R. v. Jenkinson*, 1 T. R. 82. As an argument, that the words of the statute would not in strictness comprehend convictions, it may be observed, that in 13 Geo. 2, c. 18, s. 5, which relates to the time of suing out the *certiorari*, the act expressly enumerates convictions, as well as judgments and orders. See *ante*, p. 375, as to the words "judgment or order" in 12 & 13 Vict. c. 45, s. 7.

(b) According to the report (1 T. R. 82), the act referred to at the bar as an authority for granting the attachment was 13 Geo. 2, c. 18; but that act, of which the 5th section alone relates to the subject, is confined to the *time* of suing out the *certiorari*, without any allusion to *costs*. This is, therefore, probably a mistake; for the 5 Geo. 2, c. 19, is the act upon which the recognizance and attachment are founded.

from before magistrates(c); except in the case of convictions under the former game laws, before noticed, which were regulated by the statute 5 Ann. c. 14, until the new act relating to game (1 & 2 Will. 4, c. 32), which now takes away the *certiorari* for the removal of game convictions.

The *title* of the act, 5 Geo. 2, c. 19, it is observable, relates only to orders and judgments made *on appeal*; from which a doubt has been suggested, whether its provisions are applicable to convictions on those statutes, which do not give any appeal to the sessions(d). However, the first section of the statute refers generally to orders and judgments made by justices of the peace; and there seems no sufficient reason for confining the words "*such judgment or order*," in the section above recited, to orders made on appeal. Accordingly, in a case arising upon the statute 5 Ann. c. 14, which gave no appeal to the sessions, it was taken for granted, that the regulations of 5 Geo. 2, c. 19, were necessary to be complied with(e). And in practice a recognizance is required, without any distinction whether there has been an appeal, or not.

#### Sureties.

According to the construction put upon this, and the similar provisions in the former act of 5 Ann. c. 14, there must be a recognizance by two sureties, in 50*l.* each; and the statute is not satisfied by a recognizance of the defendant, and two sureties, each in 25*l.*

The party prosecuting the *certiorari* must *himself* enter into the recognizance, with two sureties in addition(f).

And where the *certiorari* is applied for on behalf of a parish, one or two of the inhabitants of the parish must enter into the recognizance on behalf of the rest, with two sureties also(g).

(c) See *R. v. Boughey*, 4 T. R. 281; *R. v. Dunn*, 8 *Id.* 217. Appendix.

(d) See 8 T. R. 218, n. (b).

(e) *R. v. Dunn*, 8 T. R. 217. See the Form of a Recognizance, in the

(f) *R. v. Boughey*, 4 T. R. 281.

(g) *R. v. Inhabitants of Abergele*, 5 A. & E. 795; 1 Nev. & P. 235; 1 Nev. & P. Mag. Ca. 66, S. C.

But where a *certiorari* was allowed on an insufficient recognizance, the Court of Queen's Bench refused to quash the *certiorari*, but merely quashed the allowance, and sent the writ back to the sessions, in order that it might be duly allowed after the parties prosecuting the writ should have entered into a proper recognizance(*h*).

The recognizances are returned by the justices, along with the *certiorari*, to the Crown Office, and filed.

The conditions as to recognizances, like the others that have been mentioned, do not attach upon applications by the prosecutor or the Attorney-General *ex officio*(*i*).

#### SECT. 4.—Of the Direction, Effect, and Return of the *Certiorari*.

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The writ, which may issue upon an *ex parte* application(*k*), is directed to the justices by whom the conviction was made; or, if it has been returned to the sessions, it is directed generally to the "justices assigned to keep the peace in and for the county of," &c.

According to Mr. Serjeant *Hawkins*, if a person who ought to certify a record die, having such record in his custody, a *certiorari* may be directed to his executor or administrator to certify it(*l*).

It seems that upon a conviction which ought to be

Direction of  
the writ.

(*h*) See note (*g*), *ante*, p. 422.

Exch. 533.

(*i*) *R. v. Spencer*, 9 A. & E. 485.

(*l*) 2 Hawk. P. C. c. 27, s. 41,

(*k*) See *Symonds v. Dimsdale*, 2

8th ed., by Curwood.

returned to the sessions the *certiorari* may be directed to, and the return made by, the sessions; for the justices out of sessions are supposed to return their proceedings there(*m*).

Delivery.

The writ is of no effect, unless delivered before the time for its return has expired(*n*).

Effect of.

The writ of *certiorari*, from the time of its delivery, supersedes the authority of the magistrates below; and all subsequent proceedings are void(*o*), besides being a contempt of the Court of Queen's Bench, for which the magistrate is liable to attachment and fine(*p*). Its having that operation, however, is only on condition that the proper recognizance required by 5 Geo. 2, c. 19, s. 2, has been entered into(*q*): for, by the express provisions of that statute, if the conditions there required have not been observed, the justices below may proceed; and till this has been done, the Court will not compel them to return the writ(*r*). The delivery, however, of a *certiorari*, with these necessary conditions duly performed, operates as a *supersedeas* for ever, though nothing further be done upon it(*s*).

It is the duty of the magistrate, therefore, upon receiving the *certiorari*, to yield obedience to it, by returning all the proceedings comprehended in its mandate, not only previous to the date of the *teste*, but such also, if any, as originated after the *teste*(*t*).

But though the magistrate has no further power, after the delivery of the writ regularly sued out, to do any fresh act, yet it has been said, that if a *certiorari* come after an adjudication made, but before the convicting justices have agreed upon the amount of the fine, it is no contempt in

(*m*) *Semb.* 1 Str. 470; *ante*, p. 293.

(*n*) 2 Hawk. P. C. c. 27, s. 64.

(*o*) 1 Salk. 148; 2 Hawk. P. C. c. 27, s. 64.

(*p*) 1 Mod. 44; 1 Ld. Raym. 469.

(*q*) 2 Hawk. P. C. c. 27, s. 64.

(*r*) *R. v. Dunn*, 8 T. R. 218.

(*s*) *Semb.* 3 Dy. 244, pl. 63; 2 Hawk. P. C. c. 27, s. 64.

(*t*) 2 Ld. Raym. 836, 1305; 1 Salk. 149; 1 East, 298.

them to fix the amount, in order to return their judgment complete(*u*).

If, before any *certiorari* awarded, a warrant of distress has been made, and delivered to the constable who has distrained the goods, he may proceed to sell; for the *certiorari*, under such circumstances, has no operation upon the execution, which was begun before it issued: nor has the Court of Queen's Bench any power over the warrant so previously granted, so as to make a rule upon the constable to return it(*x*).

No stay of execution begun.

If the person, to whom the *certiorari* is directed, neglects to return it, an *alias*, and after that a *pluries*, lies; and lastly, an attachment(*y*). But in practice the mode is, to take out a rule upon the magistrate, or person whose duty it is, to return the writ. This is a side-bar rule(*z*); and the party, to whom it is directed, is thereby ordered to return the writ within so many days after notice of that rule.

Return, how enforced.

The manner of making the return is as follows: viz. on the back of the *certiorari* should be inscribed, "The answer of, &c. —." The style and authority of the person making the return should be here specified(*a*): below which is inscribed, "The return of this writ appears by a certain schedule annexed thereto." This is usually signed by the justice, or person making the return; but it is sufficient, if the name and style appear in the return, though not subscribed(*b*). If the *certiorari* be directed generally to the justices assigned to keep the peace in the county of, &c., as is the case where it is directed to the sessions, the return is in these words, "The answer of A. B. (the chairman), and the justices assigned to keep

Making the return.

(*u*) *R. v. Elwell*, 2 Ld. Raym. 1514; 2 Str. 795; but see *contra*, *Yelv.* 32; *Dalt.* c. 195.

(*x*) *R. v. Nash*, 2 Ld. Raym. 990; 1 Salk. 147.

(*y*) *Dalt.* 195; *Crompt.* 116.

(*z*) 1 East, 299.

(*a*) 2 Ld. Raym. 980.

(*b*) *Anon.*, 6 Mod. 43.

the peace in and for the county of —,” and it is signed by the chairman, or only sealed.

The return must certify the record itself, and will be bad if it only certifies the tenor thereof(c), or even a copy of the record(d).

Under seal.

The return should regularly be under seal(e), as the writ enjoins, and should add the description of the justices; otherwise it will be sent back to be amended(f). It is made upon parchment: and a return is said to have been quashed, because it was upon paper, instead of parchment(g).

Filing.

The instruments to be returned are inclosed with the writ and certificate, and sent up together, to be remitted to the Crown Office, where they are filed with other criminal proceedings, in a bundle of the term in which the writ is returnable.

Practice as to drawing up conviction.

We have already seen that it is not usual for the convicting justices to draw up a formal conviction, in the first instance, in every case in which a penalty is inflicted; but to make minutes of the proceedings (without attending to the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction, to be returned to a writ of *certiorari* (h).

Examinations, &c. need not be returned.

It is sufficient to return the conviction in due form, without returning also the examinations and affidavits taken in the proceeding(i); but the information or complaint should be returned with the conviction or order(j).

(c) 1 Salk. 147.

(d) *Askew v. Hayton*, 1 Dowl. 510.

(e) 2 Hawk. P. C. c. 27, s. 70. For forms of Returns, see Appendix, tit. “Certiorari.”

(f) *R. v. Kenyon*, 6 B. & C. 640.

(g) 1 Bar. 113; *ante*, p. 158, n. (b).

(h) *Ante*, p. 288.

(i) *Anon. Lofft*, 318; *R. v. Aber-*

*gele*, 8 A. & E. 394. And it should seem that the reason for this is, that the Court will not take notice of any formal defect in the proceedings, unless it appears on the face of the conviction itself; *R. v. Liston*, 5 T. R. 338; *R. v. Cashio-bury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485.

(j) *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81.

By stat. 8 & 9 Vict. c. 87, s. 103 (Smuggling Act), no warrant of commitment under that or any act relating to the customs is to be held void, if it allege a conviction for the offence, and it appear to the Court before whom the warrant is returned that the conviction proceeded on good and valid *grounds*. If on return of such warrant to a writ of *habeas corpus*, the grounds of conviction are relied upon in answer to an alleged defect in the warrant, it seems that it lies on the party supporting the conviction to prove those grounds, and that to do so he must bring up the depositions by *certiorari*(*k*). Where a rule had been obtained for a *certiorari* to bring up an order of quarter sessions, confirming on appeal an order of justices "with all things touching the same," and a return was made, which did not include the order of justices, the Court granted a rule for *certiorari* to remove such order pending the former rule(*l*).

All matters introduced into the return by way of explanation or otherwise, except those expressly ordered to be certified, are impertinent, and will be altogether disregarded by the Court(*m*); and can neither affect the conviction, nor supply any defect in it. Impertinent matter.

If the *tenor* only of the record be returned, instead of the record itself(*n*); or if, instead of sending up a formal conviction, the affidavits only, and warrant to distrain, be returned(*o*), the return is imperfect. In such case, the return is quashed, and a new *certiorari* granted upon motion(*p*). Return quashed.

And in one case, where the inferior Court returned only a copy of the record, the Court not only quashed the writ and return, but ordered a *procedendo* (*q*).

(*k*) *Van Boven's case*, 9 Q. B. 669. See also 18 & 19 Vict. c. 126, s. 13. *sythe*, 6 D. & R. 497; 4 B. & C. 401.

(*l*) *R. v. JJ. Hertfordsh.*, 2 D. & L. 952. (*o*) *R. v. Levermore*, 1 Salk. 146.

(*m*) 2 Hawk. P. C. c. 27, s. 75. (*p*) 3 Salk. 80.

(*n*) 1 Salk. 147; *Palmer v. For-* (*q*) *Askew v. Hayton*, 1 Dowl. 510.

Variance between the writ and return.

As a writ of error can remove no record, which materially varies from the description of that set forth in the writ, so neither can a *certiorari*. Thus, a *certiorari* was to remove an order concerning *foreign* salt; the order returned appeared to be concerning *salt* only; the return was held ill (*r*). So, if the record of a conviction returned vary from the description in the writ, as to the names of the justices by whom it is said to be made (*s*), or in the name of the party convicted (*t*), it is a bad return.

Likewise, if the mandate of the writ be to remove all proceedings against A. and B., it will not remove a proceeding against A. alone (*u*). But, conversely, a writ to remove all proceedings against A. will remove those in which A. is included jointly with others (*x*).

Quashing the return.

When the record returned is for any of the foregoing reasons not well removed, nothing is before the Court upon which it can proceed (*y*). In that case, therefore, the Court will quash the return, and award a new writ (*z*), or order a *procedendo* (*a*).

*Procedendo*.

If, upon examination, it appears that the *certiorari* issued improperly, it may be superseded even after the return has been filed, and the return may be taken off the file (*b*). After that has been done, a *procedendo* may be awarded, and the record remanded. But no *procedendo* can issue till the *certiorari* and return be taken off the file (*c*); therefore, till the motion is made and

(*r*) 1 Salk. 145; 3 Salk. 79.

(*s*) 1 Sid. 448; 1 Keb. 102, 129, 282.

(*t*) 2 Hawk. P. C. c. 27, s. 86; 2 Salk. 452.

(*u*) *R. v. Baines*, 2 Ld. Raym. 1199; 1 Salk. 157.

(*x*) 2 Hawk. P. C. c. 27, s. 85. It is so laid down in regard to indictments.

(*y*) *Anon.* 3 Salk. 80.

(*z*) *R. v. Baines*, 2 Ld. Raym. 1203; 3 Salk. 79, 80; *Ashley's case*,

2 Salk. 479.

(*a*) *Askew v. Hayton*, 1 Dowl. 510.

(*b*) 1 Burr. 488. A judge at chambers has jurisdiction to issue a writ of *procedendo*, and it is matter for his discretion whether or not a summons to show cause should be granted in the first instance; *R. v. Scaife and others*, 21 L. J., M. C. 221.

(*c*) 4 Burr. 2459; 6 Mod. 43.



granted for that purpose, the motion for a *procedendo* is premature (*d*).

If the defendant, at the time of removing the conviction, be under commitment, the Court, upon the return being filed, may bail him till the validity of the conviction be determined. This was done in the following case:—The defendant was convicted of keeping an ale-house, without licence, and was thereupon committed for a month, as the act directs. After he had lain a fortnight in prison, he brought a *certiorari*, and, upon the return of it, he was admitted to bail; the Court being of opinion, that if the conviction was confirmed, they could commit him in execution for the residue of the time (*e*). But, in case of commitment under the former Vagrant Act, 17 Geo. 2, c. 5, the Court having refused a *certiorari*, on the ground of an appeal depending at the sessions, rejected the defendant's application to be out on bail till the appeal should be decided (*f*).

(*d*) 4 Burr. 2459.

(*e*) *R. v. Reader*, 1 Str. 531. This course was adopted in *Re Hammond*, 9 Q. B. 92; 2 New Sess. Cas. 397, S. C.; *Re Turner*, 9 Q. B. 80; 15 L. J., M. C. 140, S. C.; *Re Aston*, 19 L. J., M. C. 236; 1 L. M. & P. 491, S. C.; *Re Lord*, 12 Q. B. 757; 4 D. & L. 405; 16 L. J., M. C. 15, S. C., where see form of the rule. In *Re Collier and Bailey*, 3 El. & Bl. 607, a rule *nisi* was granted for the recommittal of the defendant who had been so bailed, or for the estreating of his recognizances, the conviction having been confirmed; and see *Dickenson v. Brown*, Peak. N. P. C. 234, and *Re Blues*, 5 El. & Bl. 291; 1 Jur., N. S. 543; 24 L. J., M. C. 138, S. C.; and *post*, Sect. V. It has, however,

been doubted whether the Court has power to recommit the defendant under such circumstances, and it may be observed that the statutes 8 & 9 Vict. c. 68, s. 3, and 16 & 17 Vict. c. 32, for the staying of execution on judgments in misdemeanors on giving bail in error, expressly empower the Court, upon affirmance of the judgment of the Court below, to recommit the prisoner for the remainder of his sentence. See *Dugdale v. The Queen*, 1 Dears. C. C. 254; 24 L. J., M. C. 55, S. C. As to suspension of execution by appeal, see *ante*, p. 345; and as to form of application for a *habeas corpus* to admit to bail, see *ante*, p. 389, n. (*g*).

(*f*) *R. v. Sparrow and another*, 2 T. R. 196, n.

SECT. 5.—*Proceedings in the Queen's Bench after Return of the Conviction.*

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3. <i>Reserving Special Case</i> ....	434	8. <i>Confirmed, &amp;c. after Death..</i>	<i>id.</i>
4. <i>False Return</i> .....	435	9. <i>Costs on Affirmance</i> .....	437
5. <i>Filing Return</i> .....	<i>id.</i>	10. <i>Proceedings on Recognizance</i>	438
		11. <i>Attachment for Costs</i> .....	439

We are, in the next place, to consider the proceedings in the Court above upon the conviction, after it has been properly removed into that Court.

No plea to the conviction.

It seems to have been thought regular, at one time, to allow the defendant to plead to the conviction matter impeaching the jurisdiction of the magistrate. This is reported to have been done in one of the earliest cases, in which a summary conviction by a justice was brought before the Court: viz. in *Gardner's case*, in which, according to the report, a person had been committed by a justice for going armed, on the statute 33 Hen. 8, c. 6; and he being removed by *habeas corpus*, and such facts disclosed by affidavit as showed the case to be no offence against the statute, the Court commanded a plea to be drawn comprising the whole matter, which was done; and, when it was confessed, the party was discharged (*g*).

This was in the 43 Elizabeth. But at a later period (3 Ann.), when a party, who had been convicted before a justice (upon the 27 Eliz. c. 7), of cutting down trees, offered to *plead* a title to the trees, the majority of the Court, consisting of three judges, against the opinion of Lord C. J. *Holt*, refused the plea. The chief justice was for allowing it on the authority of *Gardner's case*; and *Powell, J.*, admitted, that if the record of that case could have been found, he should have consented to receive the plea; but no such record being discovered, he thought there was not sufficient precedent to warrant the Court

(*g*) *Gardner's case*, Cro. Eliz. 822; *case*; see *De Vine's case*, O. Bridgm. 5 Co. 72, by the name of *St. John's* 288; *ante*, p. 394.

in admitting a plea to a summary conviction; and that, if the justice had not jurisdiction, the proper remedy was by action (*h*).

No attempt appears to have been since made to renew this practice; and, according to modern usage, no plea is admissible to a conviction, nor does the Court, in examining the conviction, take notice of anything but what appears upon the face of it. But *affidavits may be used to show a want of jurisdiction*, although they contradict for this purpose the finding of the justices. We have already considered this question to some extent in the preceding chapter (*i*); but it is one of sufficient importance to deserve further notice here in connection with the writ of *certiorari*. The leading case upon the subject is *The Queen v. Bolton* (*k*), in which the question was how far affidavits were admissible to review the finding of justices in an order brought up by *certiorari*; and it was held that, although affidavits will be received to show that the justices had no authority to enter upon the inquiry, as for instance, that the question brought before them by the complaint was not one to which their jurisdiction extended, yet the Court will not hear affidavits impeaching their decision or conclusion on the facts or reviewing their judgment on the evidence. Lord

Affidavits, how far admissible.

(*h*) *R. v. Burnaby*, 2 Ld. Laym. 900; 3 Salk. 217.

(*i*) *Ante*, p. 410.

(*k*) 1 Q. B. 66; and see *R. v. Prescott*, 12 Id. 823; *R. v. JJ. Chesh.*, 8 A. & E. 398; *R. v. JJ. Cambridgesh.*, 4 Id. 111; *Re Batkin*, 25 L. J., M. C. 126; *Re Thompson*, 30 L. J., M. C. 19, 23, 27, 28, 30; *Backhouse v. Bishopwearmouth*, 9 C. B., N. S. 315; 30 L. J., M. C. 118; *Wilkinson v. Dutton*, 3 B. & S. 281; 32 L. J., M. C. 152; *R. v. Blackburn*, Id. 41; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; *Keane v. Reynolds*, 2 E. & B. 748; *R. v. Dickinson*, 7 El. & Bl. 831; 3 Jur., N. S. 1076; *Thompson v. Ingham*,

14 Q. B. 710, 718; *Parker v. Nottingham Railway Company*, 33 L. J., C. P. 193, 194; 1 Smith's L. C. 673. See *ante*, p. 400, as to the admissibility of affidavits on return to a writ of *habeas corpus*; and p. 410, as to the want of jurisdiction, which enables a party to remove proceedings by *certiorari*, although it is taken away by express words. An indictment may be quashed, where it has been found by a grand jury without jurisdiction, and the defect may be shown by affidavit; *R. v. Heane*, 4 B. & S. 947; 33 L. J., M. C. 115; *Knowlden v. The Queen*, 33 L. J., M. C. 219; *R. v. Williams*, 1 Burr. 386.

*Denman*, C. J., delivering the judgment of the Court in that case, said—"It is contended that affidavits are receivable for the purpose of showing that they acted without jurisdiction; and this is no doubt true, taken literally: the magistrates cannot, as it is often said, give themselves jurisdiction merely by their own affirmation of it (*l*). But it is obvious that this may have two senses: in the one it is true; in the other, on sound principle and on the best considered authority, it will be found untrue. Where the charge laid before the magistrate, as stated in the information, does not amount in law to the offence over which the statute gives him jurisdiction, his finding the party guilty by his conviction in the very terms of the statute would not avail to give him jurisdiction; the conviction would be bad on the face of the proceedings, all being returned before us. Or if the charge being really insufficient, he had misstated it in drawing up the proceedings so that they would appear to be regular, it would be clearly competent to the defendant to show to us by affidavits what the real charge was, and that appearing to have been insufficient, we should quash the conviction. In both these cases, a charge has been presented to the magistrate over which he had no jurisdiction; he had no right to entertain the inquiry or commence an inquiry into the merits; and his proceeding to a conclusion will not give him jurisdiction. But, as in this latter case, we cannot get at the want of jurisdiction but by affidavits, of necessity we must receive them. It will be observed, however, that here we receive them, not to show that the magistrate has come to a wrong conclusion, but that he never ought to have begun the inquiry. In this sense, therefore, and for this purpose, it is true, that affidavits are receivable." In *Thompson v. Ingham* (*m*), *Patteson*, J., stated the effect of the decision in *R. v. Bolton* to be

(*l*) See *R. v. Huntsworth*, 33 L. J., *ante*, p. 143.  
M. C. 131; *R. v. Nunneley*, El., Bl. (m) 14 Q. B. 710, 718.  
& El. 852; 27 L. J., M. C. 260; and

that "where the charge is such as, if true, is within the magistrate's jurisdiction, the finding of the facts afterwards by the magistrate is conclusive, but where the charge is not such as, if true, would be within the magistrate's jurisdiction, no finding of facts can alter it." And, in *Parker v. The Nottingham Railway Company* (n), on *The Queen v. Bolton* being cited, *Erle, C. J.*, said "The effect of all the decisions upon that class of cases is contained in *Thompson v. Ingham*, that where the charge is such that, if it were true, it would give the magistrate jurisdiction, his decision is final."

In a subsequent case (o), Lord *Denman, C. J.*, delivering the judgment of the Court, said—"It is clear that the decision of a tribunal, lawfully constituted, upon a question properly brought before it respecting a matter within its jurisdiction, is not open to review on *certiorari* (*R. v. Bolton*); but the decision of persons assuming to be a tribunal, that they are lawfully constituted, is open to review. Thus, a decision either by a justice that he was in the commission, or by any arbitrator under a statute that he was duly appointed, or by a sheriff that a valid writ of trial had issued to him, might be shown by affidavit to be untrue." And, on a later occasion, when it was held that affidavits might be used to show that there was no evidence before the justices to support their statement that an objection to the validity of a church-rate was not made *bonâ fide* (p), Mr. Justice *Erle*, adverting to the decision in *R. v. Bolton*, said—"The cardinal point upon which the jurisdiction depends cannot be decided conclusively by the inferior Court. . . . No Court of limited jurisdiction can give itself jurisdiction by a wrong decision collateral to the merits of the case

(n) 33 L. J., C. P. 193, 194. The opinions of these learned judges refer to the question raised in *R. v. Bolton*, viz., the power in the justices to enter upon the inquiry, and do not militate against the rule that justices

cannot by misstatement give themselves jurisdiction.

(o) *R. v. Grant*, 19 L. J., M. C. 59.

(p) *R. v. Nunneley*, El. Bl. & El. 852; 27 L. J., M. C. 260, 262, 264.

upon which the limit to its jurisdiction depends:" and Mr. Justice *Crompton* said—"In a late case (*q*), in which the magistrate decided that a place was not a new street, we refused to interfere, because there the matter was clearly within the jurisdiction of that magistrate. . . . In cases relating to servants in husbandry, if the magistrate has decided that the man is a servant in husbandry, and if there is any evidence of that, he is the judge and not we; the justices remain the judges of that as a part of the case before them, but here the jurisdiction is removed on the happening of a certain event, and the principle laid down in *The Queen v. Bolton* and other cases applies. Upon the affidavits the dispute appears to have been *bonâ fide*." So, although the magistrate may have had power to enter upon the inquiry, it may be shown by affidavit that there was no evidence of that which is required to form the basis of his jurisdiction, *e. g.*, of a contract of service under the Master and Servants Act, 4 Geo. 4, c. 34 (*r*).

Ambiguous  
complaint.

If it is uncertain whether the complaint charges an offence or not, affidavits may be looked at for the purpose of ascertaining in what sense the justices understood and dealt with it (*s*). The Court will not notice any facts contained in the *certiorari* for the purpose of impeaching the conviction (*t*). So neither will it advert to anything stated in the return, to supply what is defective or omitted in the conviction; but everything necessary to support it must appear in the conviction itself (*u*).

Reserving  
special case.

This, however, must not be understood as applying to a *special case* reserved by the sessions, and returned with the conviction for the consideration of the Court of Queen's

(*q*) *R. v. Dayman*, 7 El. & Bl. 672; 26 L. J., M. C. 128.

(*r*) *Re Bailey and Collier*, 3 El. & Bl. 607; 23 L. J., M. C. 161; *ante*, p. 401.

(*s*) Per Erle, J., in *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81, 84; and see *Re Thompson*, 30 *Id.* 19, 23.

(*t*) *R. v. Liston*, 5 T. R. 341; and see *R. v. Cashibury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485.

(*u*) Per Holt, C. J., 2 Salk. 493. On a return to a *habeas corpus*, however, the style and authority of the justices by whom the commitment was made may be supplied by the return; 2 Ld. Raym. 980.

Bench. Such cases have frequently been reserved upon convictions, which have been brought by appeal before the sessions, and removed from thence into the Queen's Bench (*x*). And the practice has been ratified by the Court of Queen's Bench, on a question directly raised concerning its regularity (*y*). By consent of the parties, a special case may be stated by the Court of Quarter Sessions, although the writ of *certiorari* is taken away (*z*).

The only remedy (*a*) for a false return is by action on the case, at the suit of the party grieved; or by criminal information. But the Court of Queen's Bench will not stop the filing of the return, upon affidavits of its falsity, except only when the public good requires it, as in the case of orders by the commissioners of sewers (*b*). False return.

When the conviction is returned, it is filed in the Crown Office, with the indictments and other criminal proceedings returned the same term; and it does not require any motion for that purpose. Filing return.

The case must be set down for argument in the Crown paper (*c*), without which it cannot be heard, and it is then brought on in its turn. Paper-books are delivered as in other cases (*d*). Where a *certiorari* had been granted to remove a conviction made in the month of September, and a rule for a concilium had been obtained in the November following, and points for argument had been delivered in the ensuing January, the Court in its discretion refused to allow the conviction to be taken off Argument.

(*x*) *R. v. Cook*, 3 T. R. 519; 4 T. R. 273; 3 T. R. 69, 72. If a case be reserved by the sessions, and state only one question for the opinion of the Queen's Bench, the Court will not consider any other questions; *R. v. Guildford*, 2 Chit. 284.

(*y*) *R. v. Allen*, 15 East, 346. See *R. v. Jukes*, 8 T. R. 542; *R. v. Dickenson*, 7 El. & Bl. 531; 26 L. J., M. C. 204, where the origin of the practice is pointed out; and 12 & 13

Vict. c. 45, s. 11, *ante*, p. 377.

(*z*) *R. v. Dickenson*, *supra*.

(*a*) *I.e.*, apart from the contradiction in some cases allowed on affidavit, and discussed *ante*, pp. 400, 431.

(*b*) 2 Hawk. P. C. c. 27, s. 74.

(*c*) *R. v. Nelson*, 2 Barn. 44; 2 Nol. 373; *R. v. Lord*, 4 D. & L. 405; 12 Q. B. 757, *S. C.*

(*d*) See Reg. Gen. made in pursuance of 6 Vict. c. 20, s. 23.

the file, and to be returned to the justices, that they might amend it(*e*). The grounds of refusal were the delay in making the application, and the fact that the justices might have amended it before. All the counsel in support of the order, *i. e.*, showing cause against the rule, are heard first, and then all the counsel on the other side in reply.

No objection on account of any omission or mistake in the order or judgment brought up upon the return to the writ will be allowed, unless such omission or mistake has been specified in the rule for issuing the *certiorari* (*f*).

Amendment,  
&c. of conviction.

Upon cause being shown, the conviction is either amended (*g*), quashed, or confirmed.

Quashing order  
&c. in part.

It seems to be understood, that a conviction cannot be quashed in part, and stand good as to the rest (*h*), but must be quashed generally. This follows from what has before been said concerning the entirety of the judgment, which it is unnecessary here to do more than refer to. There is an instance, however, in which it was allowed, by the consent of the parties, to quash a conviction as to the penalty, and confirm it as to a condemnation of goods (*i*). An order, if sufficiently divisible, may be quashed in part (*k*), or may be enforced in part, without the residue being quashed (*l*).

Confirmed or  
quashed after  
death.

If the party, who sues out the *certiorari*, die after the return, and before the argument, the Court will nevertheless proceed, and confirm or quash the conviction (*m*).

(*e*) *R. v. Turk*, 10 Q. B. 540; and see the next note as to amending convictions.

(*f*) 12 & 13 Vict. c. 45, s. 7. See *ante*, p. 373. There are similar clauses in 11 & 12 Vict. c. 31, s. 6, and 16 & 17 Vict. c. 97, s. 113.

(*g*) *Ante*, p. 292.

(*h*) *R. v. Hale*, Cowp. 729; 2 Str. 900; *ante*, p. 177.

(*i*) *R. v. Hale*, Cowp. 729. The reporter subjoins to the case an observation, that it seemed to be the

opinion of Mr. Davenport, counsel for the defendant, that a conviction could not be adjudged bad in part, and good for the rest; but, for the benefit of his client, he consented to this mode of accommodating the dispute, and a rule was accordingly made as above.

(*k*) *Ante*, p. 177.

(*l*) *R. v. Green*, 20 L. J., M. C. 168; 15 Jur. 128, S. C.

(*m*) *R. v. Roberts*, 2 Str. 937.



If the order is quashed costs are seldom granted, but if Costs.  
it is confirmed the prosecutor is entitled to his costs;  
which are thereupon taxed by the master of the Crown  
Office (n).

According to the construction that has been put upon Amount of.  
similar provisions in other statutes, the costs to be taxed  
by the master are only those in the Queen's Bench, upon,  
and subsequent to, the *certiorari* (o).

It should seem, from the construction that has been  
put upon the statute 5 W. & M. c. 11, ss. 2, 3, relative  
to costs on the removal of *indictments*, the provisions of  
which precisely accord with those of 5 Geo. 2, c. 19,  
now under consideration, that the amount of the costs is  
not limited to the sum in the recognizance, which is  
deemed only a further security for them, and not as re-  
strictive (p).

Where a defendant had removed an indictment from the  
sessions into the Queen's Bench, and was convicted, but  
died before he could be brought up for judgment, it was  
held, that his bail were liable to pay the taxed costs of the  
prosecution under 5 & 6 W. & M. c. 11, s. 3 (q).

The costs of conveying a defendant to gaol, in execution  
of his sentence, are reasonable costs within the statute

(n) As a rule, costs are not given  
if the conviction or order is amended  
and then affirmed; *R. v. Higham*, 7 El.  
& Bl. 557; 26 L. J., M. C. 116, 119.

(o) *R. v. Summers*, 1 Salk. 54;  
Corner's Cr. Pr. p. 79.

(p) *R. v. Teal*, 13 East, 4. By  
sect. 3 of 5 W. & M. c. 11, upon  
which the question in this case  
turned, it is provided that the pro-  
secutor, within ten days after de-  
mand and refusal of the taxed costs,  
may have an attachment against the  
defendant as for a contempt on his  
recognizance, "*and that the said re-  
cognizance shall not be discharged till  
the said costs be paid:*" which pro-  
vision is verbally the same as that  
of 5 Geo. 2, c. 19, which regulates

the costs on orders and convictions.  
But a different construction prevails  
upon the statute 4 & 5 W. & M. c. 18,  
s. 2, relative to costs on *informations*;  
for, by the directions of that statute,  
if the costs be not paid by the de-  
fendant, "*then the prosecutor shall  
have the benefit of the said recogni-  
zance to compel him thereto;*" and the  
effect of these words, it has been  
held, is to limit the amount of costs  
to the extent of the sums in the re-  
cognizance. See *R. v. Filewood and  
another*, 2 T. R. 145, and the cases  
cited, 13 East, 5.

(q) *R. v. Turner*, 4 D. & R. 816.  
See *R. v. Finmore*, 8 T. R. 409; 3  
Burr. 1461; 2 Str. 874; 2 T. R. 47;  
5 *Id.* 33, and 7 *Id.* 32.

5 & 6 W. & M. c. 11, s. 3, to be allowed to the prosecutor(*r*).

Not liable for costs where *certiorari* quashed.

Proceeding on recognizance.

The party suing out the *certiorari* is not liable to costs, where it is superseded *quia improvidè emanavit* (*s*).

We have before seen, that(*t*), conformably to the regulations of 5 Geo. 2, c. 19, s. 3, the defendant, before the *certiorari* issues, is obliged to enter into a recognizance for the payment of the costs within one month of confirmation; and an attachment may issue on affidavit of nonpayment thereof *within ten days* after demand(*u*), the costs to be taxed according to the course of the Court, which we have above explained. The recognizance may be taken either before the justices below, or before a judge of the Court(*u*).

The recognizance—which, if taken before the justices below, is returned upon the *certiorari* along with the conviction—remains filed in the Crown Office; and, after the conviction is affirmed, becomes liable to be estreated, if not discharged or respited. A discharge is obtained of course, by producing at the Crown Office a receipt for the payment of the taxed costs.

*Scire facias* on recognizance.

The prosecutor may, also, after the recognizance is forfeited, and while it remains in the Queen's Bench, sue out a *scire facias* upon it; and upon the return by the sheriff to the *levari facias*, the Court, on motion, will grant a rule for the taxation of the prosecutor's costs by the master, and that they be paid out of the sum levied, rendering the overplus to the bail; the defendant and bail having had notice to show cause. This was said, in one case(*x*), to be the best and easiest method, the king having no interest in the money, but being only a royal trustee for the party.

(*r*) *R. v. Gilbie*, 5 M. & S. 520. See, as to these costs being paid by the party committed for an indictable offence, 3 Jac. 1, c. 10, s. 1; 11 & 12 Vict. c. 42, s. 26; and upon summary convictions, 11 & 12 Vict.

c. 43, s. 21.

(*s*) Sayer on Costs, p. 306.

(*t*) *Ante*, p. 420.

(*u*) *R. v. Midlam*, 3 Burr. 1721.

(*x*) *R. v. Eyres and Bond*, manucaptors, 4 Burr. 2119.

But the more usual course is, to proceed by attachment upon section 3 of the statute 5 Geo. 2, c. 19, which provides, "that the party entitled to the costs, within ten days after demand made of the person or persons who ought to pay the costs, upon oath made of the making of such demand, and refusal of payment thereof, shall have an attachment granted against him or them for the contempt; and the recognizance given upon the allowing the *certiorari* shall not be discharged, until the costs shall be paid, and the order shall be complied with and obeyed." Upon the master's *allocatur*, therefore, and affidavit of the service thereof, and of demand and non-payment as above, an attachment issues, on motion for that purpose.

Attachment for costs.

The intention of the acts requiring security for costs being to prevent vexatious removals, it was held, in a case which occurred upon the former act of 5 Ann. c. 14, s. 2,—where the defendant was compelled to sue out a *certiorari*, merely to obtain a copy of the conviction, for the purpose of defending himself in an action brought for the same fact, the magistrate having improperly refused to grant a copy,—that the defendant, under these circumstances, was not liable to pay the costs of the *certiorari* on the affirmation of the conviction(y).

Case where no costs allowed on affirmation.



# SECT. 6.—*Execution after Affirmance in the Court of Queen's Bench.*

1. *Process* ..... 439 | 2. *Effects of Pardon*..... 441

Upon the affirmation of the conviction in the Court above, the process for the recovery of the penalty must issue out of that Court; for the record being there, the justices below have no further authority, and cannot award any process upon it(z).

Process.

(y) *R. v. Midlam*, 3 Burr. 1720.

8th ed.; Corner's Cr. Pr. p. 79; *R. v. JJ. Hants*, 33 L. J., M. C. 104.

(z) See Tidd's Prac. 1032, 1245,

In one case, on the statute 13 Car. 2, c. 10, the Court refused to issue an attachment, on affirmance of the conviction; because the proper process, which it was admitted the Court ought to execute upon their judgment of affirmance, was by *levari facias*(a). In another case upon the same statute, it was expressly held, that the Court might award a *fieri facias* against the goods, and in default thereof a *capias ad satisfaciendum* against the person; and a *fieri facias* was awarded accordingly(b). On a still later occasion, a *levari facias* having been awarded to the sheriff, after affirmance of a conviction for deer-stealing, no doubt was made that the Court must award execution; for the record could not be sent back to the justices; and, as the Court have a power to affirm the conviction, they have, by necessary consequence, a power to award execution(c). But an expression attributed to Lord *Holt*, in one case, seems to convey a doubt, whether, in default of goods to levy upon, the Court of Queen's Bench could award a commitment(d).

And in a case, where the justices on conviction had a *discretionary* power, for want of sufficient distress whereon to levy the penalty, to commit the offender to prison for any term not exceeding six months; and the conviction having been removed by *certiorari* and affirmed, a *levari facias* was awarded, to which there was a return of *nulla bona*: it was held, that as the Court of Queen's Bench had no such authority as was given to the justices, as to the term of imprisonment; the proper course was, in order to prevent a failure of justice, to grant a *procedendo* to carry back to the justices the record of conviction and the order of sessions, and command the justices to enter continuances upon the appeal from session to session, and proceed to award execution(e).

(a) *R. v. Pullen*, 1 Salk. 369.

*S. P.* 2 Ld. Raym. 768.

(b) *R. v. Rogers*, 4 W. & M. 1 Salk. 369; Carth. 231.

(d) *R. v. Speed*, 1 Ld. Raym. 584.

(c) *R. v. Speed*, 1 Salk. 379; and

(e) *R. v. Neville*, 2 B. & Ad. 299.

If the person entitled to the penalty die after affirmance, and before execution, his personal representative may suggest the death upon the roll, and have execution by *scire facias*; but cannot sue out a *levari facias* for that purpose, without a *scire facias*(*g*).

The process issuing out of the superior Court is not directed to the constable, as the warrant of the justices would be, but to the sheriff; for he is the proper officer of the Court(*g*).

A question has been made, whether a summary conviction can be remitted by pardon. Where the forfeiture was given to the party grieved, it seemed to be the better opinion, that a summary conviction for a penalty was not within the terms of a general pardon(*h*); but now, by 22 Vict. c. 32, power is given to the Crown to remit penalties, although they may be payable wholly or in part to some party other than the Crown.

*Quære*, if remitted by pardon.

(*g*) *R. v. Ford*, 2 Ld. Raym. 768.

(*h*) *R. v. Barret*, 1 Salk. 383. It is laid down in 3 Inst. 238, that after an action popular is brought, *as well for the king as for the informer*, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because, by bringing the action the informer hath an interest therein:

but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act), because the informer cannot bring an action or information originally for his part only, but must pursue the statute, and, if the action be given to the *party aggrieved*, the king cannot discharge the same.

## CHAPTER V.

OF STATEMENT OF A CASE BY THE JUSTICES UNDER  
20 & 21 VICT. C. 43.

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Provisions of  
20 & 21 Vict.  
c. 43.

THE provisions of this important statute will be found in the Appendix, and it is sufficient here to state that its general effect is to enable the party to an information or complaint determinable by justices in a summary way, if dissatisfied with their decision as being erroneous in point of law, to obtain the opinion of a superior Court thereon by means of a case stated and signed by the justices for that purpose (*a*).

If, however, the justices are of opinion that the application to them for the case is merely frivolous, they may refuse to state it (subject to review by a superior Court (*b*)), unless the application is made by or under the direction of the Attorney-General, in which case they have no discretion in the matter, but must state the case (*c*). The power of appeal to the superior Court under this statute, if exercised, operates as an abandonment of the right of appeal to the Quarter Sessions, if such right exists in the particular case (*d*); and the appellant must also comply with certain conditions in order to have the benefit of the

(*a*) 20 & 21 Vict. c. 43, s. 1.

(*b*) It seems that a Judge at Chambers can order a case to be stated; *Ex parte Smith*, 3 H. & N.

227; 27 L. J., M. C. 186; and see sect. 8 of the Act.

(*c*) Sects. 4, 5.

(*d*) Sect. 14.

statute, for instance, the application for the case must be made within three days after the determination of the justices, and the case must be transmitted by the appellant to the superior Court within three days after he has received it, having first given notice in writing of the appeal with a copy of the case to the respondent(*e*); the appellant has also to enter into a recognizance conditioned to prosecute the appeal without delay and to pay the costs (if any) awarded by the superior Court, and to appear (if discharged from custody) to receive judgment, unless the decision be reversed(*f*). No *certiorari* is required to remove the conviction or order appealed against(*g*). The Court may remit the case to the justices for amendment(*h*), and make such order as to costs as they may think fit; but the justices are not to be liable to any costs by reason of the appeal(*i*), nor, after the decision of the superior Court, to any action for enforcing the order or conviction (although it may be defective)(*k*).

The dismissal of a complaint or information is within the statute(*l*); so is a complaint made against the accounts of a surveyor of highways (under sect. 44 of 5 & 6 Will. 4, c. 50), although the sessions make no order on such complaint otherwise than by allowing the account(*m*). But the statute does not apply where the appellant alleges that he has been improperly rated, as he should appeal to the sessions(*n*), and it was not intended to substitute special cases for the old mode of appeals(*o*). Nor does the act apply where justices refuse to enforce the payment of rates, the validity of which they have no power to inquire into, if good on their face and unappealed

What cases are within the statute.

(*e*) Sect. 1.

(*f*) Sect. 2, and see sect. 13.

(*g*) Sect. 10.

(*h*) Sect. 7.

(*i*) Sect. 6.

(*k*) Sect. 9.

(*l*) *Davy v. Douglas*, 4 H. & N. 480; 28 L. J., M. C. 193.

(*m*) *Townsend v. Reed*, 10 C. B., N. S. 308; 30 L. J., M. C. 223.

(*n*) *R. v. JJ. Gloucestersh.*, 2 El. & El. 420; 29 L. J., M. C. 117; *Luton Board of Health v. Davis*, 29 L. J., M. C. 173.

(*o*) Per Crompton, J., *Wheeler v. Birmingham*, 26 L. J., M. C. 176, n.

against(*p*); and this is so, although they may be authorized by a local act to grant a warrant of distress, unless the party summoned prove that he is not "chargeable with or liable to the rate"(*q*).

Recognizance.

The recognizance may be entered into by the appellant at any time within the three days allowed for applying for the case, and need not be entered into simultaneously with the making of the application(*r*).

Transmitting case, &c.

The condition as to transmitting the case to the Court within three days after the appellant has received it must be strictly performed, otherwise the case will be struck out of the Crown paper(*s*); and it is not sufficient for the appellant's attorney merely to transmit it to his London agent within the three days(*t*), but it must be lodged in Court within that period. So notice of the appeal, and a copy of the case, must be given to the respondent before the case is lodged; and it is not sufficient to post them within the three days, if they do not reach him until after the case has been lodged(*u*).

The provision as to the transmission of the case within the three days cannot be waived(*x*). It has, however, been said, that when an appellant has done all that he can to comply with the statute, but through the act of the other party he has been prevented from fulfilling its con-

(*p*) *Walker v. Great Western Railway Company*, 2 El. & El. 325; 29 L. J., M. C. 107; *Wheeler v. Birmingham*, 29 L. J., M. C. 175, n.; *Sparrow v. Impington*, Id. 176, n. In such cases the proper course seems to be to apply for a rule under 11 & 12 Vict. c. 44, s. 5, commanding the justices to issue their warrant.

(*q*) *Ex parte May*, 2 B. & S. 426; 31 L. J., M. C. 161.

(*r*) *Chapman v. Robinson*, 1 El. & Bl. 25; 28 L. J., M. C. 30. As to suspension of execution by appeal, see ante, p. 345.

(*s*) *Banks v. Goodwin*, 3 B. & S.

548; 32 L. J., M. C. 87; *Woodhouse v. Woods*, 29 L. J., M. C. 149; *Morgan v. Edwards*, 5 H. & N. 415; 29 L. J., M. C. 108; *Peacock v. The Queen*, 4 C. B., N. S. 264; 27 L. J., C. P. 224; *Pennell v. The Churchwardens of Uxbridge*, 31 L. J., M. C. 92; *Ashdown v. Curtis*, Id. 216. In such case, it appears, that costs will not be given against the appellant; *Conway v. Richardson*, 10 L. T., N. S. 853, Ir. Q. B.

(*t*) *Banks v. Goodwin*, *supra*.

(*u*) *Ashdown v. Curtis*, *supra*.

(*x*) *Morgan v. Edwards*, 5 H. & N. 415; 29 L. J., M. C. 108.



ditions, there might, probably, be a relaxation of the rule in his favour (*y*); and where the respondent could not be found, it was held sufficient to serve on her attorney, who appeared before the magistrates, the notice of appeal and copy of the case within three days, it appearing that they had afterwards come to her hands (*z*).

Sunday is not excluded in counting the three days, and therefore when the decision of the justices took place on a Thursday, and the application to them to state a case was not made until the following Monday, it was held to be too late (*a*). If, after the expiration of the three days, the case remain in the appellant's hands, and he take it back to the justices, they have no power of amending it; and if they do so in fact, the appellant does not gain a further period of three days from the amendment for transmitting the case to the Court (*b*).

The proper place for delivering copies of the case, pursuant to Rule 16 of Reg. H. T. 1853, is the Judges' Chambers, at Rolls' Gardens, Chancery Lane, and not the Judges' Clerks-room, at Westminster (*c*). If the respondent does not deliver copies of the case, the appellant should do so for him, and in such case, unless they are paid for by the respondent, or the amount deposited by him with the Master, his counsel cannot be heard (*d*); and where judgment was given for the respondent, but

Delivery of  
copies of case.

(*y*) *Id.* and *Woodhouse v. Woods*, *Id.* 149.

(*z*) *Syred v. Carruthers*, El. Bl. & El. 469; 27 L. J., M. C. 273.

(*a*) *Peacock v. The Queen*, 4 C. B., N. S. 264; 29 L. J., C. P. 224; and see *Rowberry v. Morgan*, 9 Exch. 730; *Mumford v. Hitchcock*, 14 C. B., N. S. 361; 32 L. J., C. P. 168, and *Wynne v. Ronaldson*, 13 W. R. 899.

(*b*) *The Gloucester Board of Health v. Chandler*, 32 L. J., M. C. 66. *Quære*, whether the justices can amend the case within the three days after they have delivered it to the appellant? *Id.* See *post*,

"Amendment," p. 447.

(*c*) *Howells v. Wynne*, 15 C. B., N. S. 3; 32 L. J., M. C. 241. By rule 16, four clear days before the day appointed for argument the appellant must deliver copies of the case, with the points intended to be insisted on, to the lord chief justice or lord chief baron and the senior *puisne* judge of the Court, and the respondent to the other two judges of the Court next in seniority.

(*d*) *Hill v. Thorncroft*, 30 L. J., M. C. 53, n. (1).

no paper-books had been delivered by him, no costs were allowed (*e*).

Who to begin.

In the Common Pleas, the appellant always begins. In the Queen's Bench and the Exchequer, the appellant begins only if the information or complaint has been dismissed by the justices; if a conviction or order has been made, the respondent on appeal to either of those Courts begins (*f*). The practice of those Courts has been thus clearly stated by Mr. Baron *Bramwell* (*g*): "The general rule is, that the appellant shall begin. An exception exists in the case of an appeal against a conviction. There the respondent begins, because the burthen of proof is on him; but here the burthen of proof is on the appellant, for here he has to make out that an offence was committed, the justices having held that there was no offence. He ought therefore to begin."

The argument.

If the respondent does not appear, the appellant in order to obtain the judgment of the Court must show that the decision of the justices was wrong (*h*).

Although the evidence is set forth in the case, yet the superior Court does not put itself in the position of the justices in deciding on its weight or sufficiency, but accepts their finding upon facts within their jurisdiction as conclusive, whatever may be the opinion of the Court itself as to the value of the evidence (*i*). The superior Court in such a case has only to see whether the determination is erroneous "in point of law" (*k*). The

(*e*) *Potts v. Cambridge*, 8 El. & Bl. 847; 27 L. J., M. C. 62, 65.

(*f*) *Sheppard v. Churchwardens of Bradford*, 33 L. J. 182, 184; *Gardner v. Whitford*, 4 C. B., N. S. 672; *J.J. Beds v. St. Paul's, Bedford*, 7 Exch. 655; 21 L. J., M. C. 228; *Ellis v. Kelly*, 6 H. & N. 222; 30 L. J., M. C. 35; *Jones v. Taylor*, 1 El. & El. 20; 28 L. J., M. C. 204, n.; *Bennett v. Blackpool Board of Health*, 4 H. & N. 127; 28 L. J., M. C. 204; *Shackell v. West*, 29 *Id.* 46, n. (1).

(*g*) *Ellis v. Kelly*, *supra*, in which case the justices had dismissed an information for falsely pretending to be a physician under 21 & 22 Vict. c. 90.

(*h*) *Syred v. Curruthers*, El. Bl. & El. 469; 27 L. J., M. C. 273.

(*i*) *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6, *dissentiente* Wightman, J.

(*k*) See *Taylor v. Oram*, 1 H. & C. 370; 31 C. J., M. C. 252.

main question decided in the case, namely, whether an offence has or has not been committed within the statute, would be subject to review as involving a question of law, but the subordinate facts leading up to it would be left entirely to the decision of the justices. The circumstances which lead to the conclusion of law are for the justices; it is for the superior Court to say whether they are sufficient to warrant the conclusion (*l*). The justices have no right to send a statement of facts, and ask an opinion on them, except only so far as they raise a point of law (*m*).

The Court has no power to give an opinion on any question not submitted by the magistrates for the opinion of the Court, although the parties may desire and ask for judgment upon it (*n*); nor will the appellant be allowed to take objections which were not raised before the justices (*o*). The rule it seems is different as to the respondent (*p*).

By the 6th section, the Court has power to amend "the determination in respect of which the case has been stated, or remit the matter to the justices;" and where an order had been made under a wrong section of a statute, the Court considered that they had power to draw it up under the right section, but declined to do so, and remitted the case to the justices for rehearing, in order not to deprive the appellant of his appeal to the Quarter Sessions, which was given by the same act (*q*). Amendment.

The Court will not entertain a motion to send a case back to be amended before the case comes on for argument (*r*).

Under this statute, costs may be awarded for or against the Crown, whether directly or indirectly a party to the in- Costs.

(*l*) See per Wightman, J., *Belasis v. Hannant*, 31 L. J., M. C. 228.

(*m*) Per Crompton J., *Id.*

(*n*) *Overseers of St. James v. Overseers of St. Mary*, 6 C. B., N. S. 878; 29 L. J., M. C. 26.

(*o*) *Purkis v. Huxtable*, 28 L. J., M. C. 221.

(*p*) See *Topping v. Keysell*, 33 L. J., C. P. 229; and *Stancilffe v. Clark*, 7 Exch. 439.

(*q*) *Shackell v. West*, 29 L. J., M. C. 45.

(*r*) *Christie v. St. Luke, Chelsea*, 8 El. & Bl. 992; 27 L. J., M. C. 153; see *ante*, p. 445.

formation (*t*). The unsuccessful party generally pays costs, although he may have argued merely in support of the decision of the magistrates(*u*), or may not have appeared to support their decision, or taken any part in settling the case(*x*). But where it appeared that the justices had erroneously adjudged forfeiture of a beerhouse licence in addition to a penalty, the Court, while upholding the conviction itself, refused to order the payment of costs by the appellant, on the ground that if the conviction had been drawn up containing such an adjudication it would have been quashed(*y*). The successful party should ask for costs, after the Court have given judgment in his favour.

Effect of case  
being stated on  
issuing of  
*certiorari*.

It seems, that where the objection goes to the jurisdiction, a *certiorari* may issue, although a case has been stated under the above act, and although it is still pending for decision(*z*).

(*t*) *Moore v. Smith*, El. & El. 597; 28 L. J., M. C. 156; see as to the Crown's non-liability to costs in general; *R. v. Beadle*, 7 E. & B. 492; 26 L. J., M. C. 111; and 18 & 19 Vict. c. 90.

(*u*) *Venables v. Hardman*, 1 El. & El. 79; 28 L. J., M. C. 33.

(*x*) *Wednesbury Local Board of Health v. Stevenson*, 33 L. J., M. C. 111, qualifying *Lee v. Strain*, *Id.*

221; see also *Buckle v. Wrightson*, 34 L. J., M. C. 43, 45. The successful party when allowed costs is entitled to those of preparing and amending the case beyond the fees allowed by section 3 and schedule A.; *Glover v. Booth*, 2 B. & S. 807; 31 L. J., M. C. 270.

(*y*) *Cross v. Watts*, 13 C. B., N. S. 239; 32 L. J., M. C. 73.

(*z*) *R. v. Hodgson*, 12 W. R. 423.

## PART IV.

OF THE RESPONSIBILITY AND INDEMNITY OF MAGIS-  
TRATES AND THEIR OFFICERS.

## CHAPTER I.

## PROCEEDINGS AGAINST JUSTICES.

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HAVING in the foregoing pages defined the powers and duties of justices of peace and their officers, in the exercise of a summary penal jurisdiction, we are now, in conclusion, to describe the nature and extent of responsibility to which they are subject in the execution of those duties, and the modes of redress allowed by law for any irregularity or excess in their proceedings (a).

(a) When a party is entitled to relief *ex debito justitiæ* against illegal proceedings, the Courts have no power to impose upon him the terms that he shall not bring any action against the party from whose illegal act he has suffered, as a condition of relief; but they often refuse the

costs of the application unless he consent to such terms. See *Downey's case*, 7 Q. B. 283; and *Re Blues*, 5 El. & Bl. 291; 24 L. J., M. C. 138; 1 Jur., N. S. 543. When the remedy is by appeal and not by action, see *Bavin v. Hutchinson*, 31 L. J., M. C. 229.

SECT. 1.—*Of the Action against Justices for Acts done in pursuance of Conviction.*

1. 11 & 12 Vict. c. 44— <i>Acts within Jurisdiction</i> 450 <i>Acts without Jurisdiction</i> 454	7. <i>Setting aside Proceedings in Actions against Justices</i> .. 463
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5. <i>Rule ordering Justice to do an Act</i> ..... <i>id.</i>	11. <i>Warrant for Possession of Tenements</i> ..... <i>id.</i>
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Acts within  
jurisdiction.

Whether a justice of the peace is liable to an action for any *judicial* act, where he has *jurisdiction* over the subject matter of inquiry, must be considered as doubtful. This point was raised some few years ago before the Court of Exchequer in the case of *Gelen v. Hall*(b). The second count of the declaration in that case averred that the defendant, being a justice of the peace, unlawfully, maliciously, and without reasonable and probable cause, took an information, issued a summons against, and convicted in a penalty and costs, the plaintiff for an offence against a bye-law of a railway company, which penalty and costs he had to pay to prevent himself from being imprisoned, that the conviction had been quashed on appeal, and that the defendant had thereby been damnified. A verdict for 5*l.* being found for the plaintiff on this count, it was moved that the judgment should be arrested on the ground that no such action would lie. After elaborate arguments, the Court in a considered judgment said, “A rule was obtained on behalf of the defendant to set aside the verdict as being against evidence, and also to arrest judgment on the ground that the second count discloses no legal cause of action. *Upon the latter point we have bestowed much consideration, and we are not at present prepared to hold the count bad.*” They granted a new trial. And in a more recent case(c) the point was again raised,

(b) 2 Hurl. & N. 379.

(c) *Fuller v. Sutton*, Q. B., 29 April, 1864.

but as it turned out that the action had not been brought in time, it again became unnecessary to determine this question. If, however, the action lies, it must be on the ground that the justice was actuated by corrupt and malicious motives. This was so at common law(*d*), and now it is so expressly declared by 11 & 12 Vict. c. 44, s. 1.

By that section, every action brought against any justice of the peace for any act done by him in the execution of his duty as such justice(*e*), *with respect to any matter within his jurisdiction* as such justice, shall be an action on the case(*f*) as for a tort, and in the declaration(*g*) it shall be expressly alleged that such act was done *maliciously, and without reasonable and probable cause*; and if at the trial, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuited, or a verdict shall be given for the defendant.

This section, it will be observed, makes no distinction between ministerial and judicial acts; and should it eventually be held that a justice is not liable at all in an action for the latter, it will become necessary, firstly, to distinguish between judicial and ministerial acts(*h*), and, secondly, to decide what ministerial acts are entitled to the protection afforded by this section.

A distinction must be drawn between a mere mistake or irregularity in point of law and a want or excess of jurisdiction. In a late case, *Crompton, J.*, said—"We must take care that we do not go too far, and say that in every case in which the justices come to a wrong conclusion they act without jurisdiction. Their jurisdiction is to decide the law and the fact"(*i*), and there may be an

(*d*) See the authorities cited in *Gelen v. Hall, supra*. See also per Erle, J., in *Taylor v. Nesfield*, 3 E. & B. 724, 730.

(*e*) See *Kirby v. Simpson*, 10 Exch. 358; *post*, p. 457, n. (*e*).

(*f*) Forms of action are in effect abolished by 15 & 16 Vict. c. 76, ss. 3, 41.

(*g*) Or plaint in the County Court under 9 & 10 Vict. c. 95. See 11 & 12 Vict. c. 44, ss. 10, 14.

(*h*) See *ante*, p. 20, n. (*k*).

(*i*) *R. v. Lundie*, 31 L. J., M. C. 157, 160; and see *R. v. JJ. Sussex*, 7 El. & Bl. 220; 26 L. J., M. C. 74.

erroneous exercise of jurisdiction without an excess of it. Thus, where justices signed a conviction and warrant of commitment, leaving blanks for the amount of costs to be inserted, this was held to be a mere irregularity and not an excess of jurisdiction, and the plaintiff having brought an action for false imprisonment, was held to have been rightly nonsuited under the first section of this statute (*j*). So where costs were ordered to be paid to the party to an appeal, instead of the clerk of the peace for him, it was held to be merely erroneous procedure, and not a defect in jurisdiction (*k*).

And where a man was summoned for nonpayment of a church rate, and the justices without drawing up a formal order issued a warrant bearing the date of their decision, and failing both to recite the order and to show a previous disobedience of the order: it was held that the error was of form, and the justices were entitled to the protection of sect. 1. In this case, *Jervis*, C. J., said—"If necessary, the Court might, perhaps, draw a distinction between sects. 1 and 2 of 11 & 12 Vict. c. 44; but it is not necessary. Were it so, I confess I should be inclined to think that 'exceeding his jurisdiction' in sect. 2 means assuming to do something which the act under which he is proceeding could by no possibility justify, as in the case in the Queen's Bench of *Leary v. Patrick*, where there could have been no authority to issue a distress for costs not adjudged by a conviction, or as was the case in *Barton v. Bricknell*, in which case there was no power to order the plaintiff to be put in the stocks. But I abstain from offering an opinion on this point" (*l*).

In *Barton v. Bricknell*, a justice of the peace convicted a man under 29 Car. 2, c. 7, s. 1, in a penalty and costs to be levied by distress, and the conviction directed that, in default of payment and sufficient distress, he should be put

(*j*) *Bott v. Ackroyd*, 28 L. J., M. C. 207.

(*l*) *Ratt v. Parkinson*, 20 L. J., M. C. 208.

(*k*) *R. v. Binney*, 1 E. & B. 810.



in the stocks ; a distress was levied, and an action of trespass was then brought : it was held, that the complaint was for distraining, that this was within the justice's jurisdiction, and that he was entitled to the protection of 11 & 12 Vict. c. 44, s. 1, notwithstanding the illegal alternative in the judgment (*m*). A justice has jurisdiction to require sureties for good behaviour of a person charged before him upon an information with having published a libel calculated to produce a breach of the peace, and, in default, to commit him to prison ; and was therefore held not liable to an action of trespass, although the warrant had required the libeller to find sureties " to keep the peace " and had been quashed (*n*). And, in like manner, a justice who refuses to take bail on a charge of misdemeanor is not liable without malice (*o*).

And where a man was summoned before justices for nonpayment of a church rate, and defended himself on the ground that the complaint was too late, and they had no jurisdiction because the rate had been demanded more than six months before, but evidence of a later demand within time being given, the justices wrongfully decided against him, they were held to be protected by sect. 1, as it was a question for them to determine (*p*). And if, on such a summons, the validity of the rate is disputed, the question of *bona fides* being for the justices to decide, their decision is within sect. 1, unless, indeed, they have chosen so to decide and attempted to give themselves jurisdiction by acting without reasonable or probable cause (*q*).

And where a warrant of distress, regular in other respects, was signed by a justice who had not taken the oaths at the general sessions, nor delivered in the certificate required by law : it was held, that an action of trespass would not

(*m*) *Barton v. Bricknell*, 13 Q. B. 393.

(*n*) *Haylock v. Sparke*, 1 E. & B. 471 ; 22 L. J., M. C. 67. The Court were of opinion that the justice had intended to exercise the jurisdiction, which he possessed, viz.—to require sureties for good behaviour, and that it was a case of jurisdiction

informally exercised.

(*o*) *Linford v. Fitzroy*, 13 Q. B. 240.

(*p*) *Sommerville v. Mirehouse*, 1 B. & S. 652.

(*q*) *Pease v. Chaytor*, 1 B. & S. 658 ; 31 L. J., M. C. 1 ; 3 B. & S. 620 ; 32 L. J., M. C. 121.

lie against the persons who executed the warrant; for the acts of a justice of the peace, who is not duly qualified, are not absolutely void (*r*). Knowledge on the part of the committing magistrate that the prisoner will be subjected to restrictions unnecessarily severe in the gaol, to which the commitment is made, does not make the magistrate a trespasser unless he expressly direct such treatment to be adopted in the particular case (*s*).

And where a justice committed a party charged (under 7 & 8 Geo. 4, c. 30), with cutting down a tree growing on premises in his own occupation, belonging to another person: it was held, that in the absence of all proof of malice, he could not be charged as having acted without jurisdiction, and liable in an action of trespass and false imprisonment; for, if the trees were excepted in the lease, the tenant might be a trespasser; and, if liable in trespass, it was by no means clear that he might not be liable criminally (*t*).

Acts without or  
in excess of  
jurisdiction.

When a justice acts without jurisdiction or in excess of it, he becomes liable to an action, whether he be acting judicially or ministerially (*u*).

Formerly, the action was maintainable before the conviction was quashed. And although it was clear that the action lay if the conviction were bad on its face, either by disclosing want of jurisdiction or an absence of those particulars necessary to constitute a good conviction, yet if it were good on its face, it was a matter of very considerable doubt as to how far the facts stated in it could be controverted. It was said that although, as a general rule, a

(*r*) *Margate Pier Company v. Han-*  
*nam*, 3 B. & Ald. 266, *ante*, p. 26.

(*s*) *Cave v. Mountain*, 1 M. & G.  
257. In this case the period for  
which the party had been committed  
for further examination appeared to  
the Court to be too long, but as the  
jury had found to the satisfaction of  
the judge at Nisi Prius, that the  
detention was not excessive, a rule  
for a new trial was refused.

(*t*) *Mills v. Collett*, 6 Bing. 85; 3

M. & P. 242. See 23 & 24 Vict.  
c. 96, s. 33.

(*u*) *Crepps v. Darden*, Cowper,  
640; 1 Smith's L. C. 649; *Davis v.*  
*Russell*, 5 Bing. 354; Hardr. 483;  
*Perkins v. Proctor*, 2 Wils. 384; *Sad-*  
*grove v. Kirby*, 6 T. R. 483; *West*  
*v. Small*, 3 M. & W. 418; *Doswell*  
*v. Impey*, 1 B. & C. 169; *Davis v.*  
*Cupper*, 10 B. & C. 28; *Jones v.*  
*Gurden*, 2 Gale & D. 133.

conviction good on its face was an estoppel as to all matters stated in it, it might still be shown that the justice had no jurisdiction. This however was not altogether clear, and even if it were so, it was very difficult to decide the extent of the exception (x). The decision of this question has now become (with respect to actions against justices) in a great measure unimportant, as it is necessary, under 11 & 12 Vict. c. 44, s. 2, to quash the conviction before bringing any action against a justice for acts done without or in excess of jurisdiction. That section provides, that for any act done by a justice in *a matter of which by law he has not jurisdiction, or in which he shall*

(x) The older decisions, which are inserted in the text in former editions of this work, may be thus briefly summarised for the purpose of reference. Where want of jurisdiction appeared on the face of the conviction, an action lay without first quashing the conviction; *Crepps v. Durden*, Cowp. 640; *Gray v. Cookson*, 16 East, 15; *Groome v. Forrester*, 5 M. & S. 314; *Terry v. Huntingdon*, Hardr. 480. But if there was jurisdiction in the case, a subsisting conviction protected the defendant, however erroneous in fact or law, provided that it was not made maliciously and without reasonable and probable cause, and that the execution upon it was regular; *Fullers v. Fotch*, Holt. 287; *Strickland v. Ward*, 7 T. R. 633, n. (a); *Basten v. Carew*, 3 B. & C. 649; *Doswell v. Impey*, 1 Id. 163; *Fawcett v. Fowles*, 7 Id. 394. In *Brittain v. Kinnaird*, 1 B. & B. 432, a conviction under the Bumboat Act, 2 Geo. 3, c. 28, Dallas, C. J. said, "Extreme cases have been put, as of a magistrate seizing a ship of seventy-four guns and calling it a boat. Suppose such a thing done, the conviction is still conclusive, and we cannot look out of it;" *Mann v. Davers*, 3 B. & Ald. 105; *Terry v. Newman*, 15 M. & W. 653; *Mould v. Williams*, 5 Q. B. 469; and see 2 Tayl. Evid., p. 1406, ss. 1482—1486 (4th edition). Under the Highway Act, 5 & 6

Will. 4, c. 50, s. 73 (*Aldridge v. Haines*, 2 B. & Ad. 395; *Rogers v. Jones*, 3 B. & C. 409), where the conviction differed from the commitment in statement of the offence: justices were held liable to an action. Evidence has been admitted to explain an ambiguous finding on the face of a conviction; see *Ayrton v. Abbott*, 14 Q. B. 1. Before the statute 43 Geo. 3, c. 141 (now repealed) if the conviction had been quashed, the justice was left without any defence at the suit of the party convicted, but that statute protected him to a certain extent, by rendering him liable only to a return of the penalty (if any levied) and damages not exceeding twopence, without costs, unless he had acted maliciously, and in such case the plaintiff was not to recover anything if the justice proved at the trial that he was really guilty of the offence imputed to him; the justice could not do this unless the conviction had been quashed, though perhaps he might have shown the guilt of the plaintiff in mitigation of damages; *Rogers v. Jones*, 3 B. & C. 409. The Act applied only to cases where there had been a conviction; *Massay v. Johnson*, 12 East, 67; and where the conviction had been quashed, not where the prisoner had been merely discharged on *habeas corpus*; *Gray v. Cookson*, *supra*.

*have exceeded his jurisdiction*(y), any person injured thereby, or by any act done under any conviction or order made, or warrant issued, by such justice in any such matter, may maintain an action against the justice as he might have done before the passing of the act, without alleging malice or the want of reasonable and probable cause(z); no such action, however, shall be brought for anything done under the conviction or order(a), until it shall have been quashed upon appeal, or upon application to the Queen's Bench; nor shall such action be brought for anything done under such warrant which shall have been issued to procure the appearance of the party, and which shall have been followed by a conviction or order in the same matter, until after the conviction or order shall have been so quashed; and if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons(b) were issued previously to such warrant, and the summons were served upon the person either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear(c) according to the exigency of the summons, in such case no action shall be maintained against such justice for anything done under such warrant.

(y) That is, as it appears, where the justice has assumed to do something which the act, under which he was proceeding, can by no possibility justify; see per Jervis, C. J., in *Ratt v. Parkinson*, 20 L. J., M. C. 208, 212; see *Haylock v. Sparke*, *infra*; and *Leary v. Patrick*, 15 Q. B. 266.

(z) See form of declaration for enforcing church rate after notice to dispute its validity, where the Court held that the declaration sufficiently showed a want of jurisdiction; *Pease v. Chaytor*, 1 B. & S. 658; 31 L. J., M. C. 1; see the same case, 3 B. & S. 620; 32 L. J., M. C. 121.

(a) *Seemle*, this applies to a warrant of commitment for refusing to enter into recognizances for good behaviour; *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67, S. C.; see also *Massey v. Johnson*, 12 East, 67; *Gray v. Cookson*, 16 Id. 13; *Ex parte Gill*, Q. B., November, 1855, MS.

(b) This part of the section does not apply to a summons or warrant issued *after* conviction; *Bessell v. Wilson*, 1 El. & Bl. 489; 22 L. J., M. C. 94, S. C.

(c) Appearance by counsel or attorney is sufficient; *Bessell v. Wilson*, 1 El. & Bl. 489; 22 L. J., M. C. 94, S. C.

Upon the conviction being quashed, the justice has no defence to an action brought under this section, unless he can show that he was acting in a matter within his jurisdiction, and is entitled to the protection of the first section of the statute; in other words, that the action is ill-conceived in consequence of the absence of allegation of malice on his part (*d*). Should the action be brought under sect. 1, of course his having a defence or not depends on whether the plaintiff fails or succeeds in proving malice (*e*).

Where a justice to an otherwise good conviction added an illegal alternative, that, in default of payment of the penalty and costs or sufficient distress, the convicted person should be put in the stocks: it was held that if this alternative had been enforced, the justice would not have been entitled to the benefit of sect. 1 (*f*).

So, where justices convicted a man under 6 & 7 Vict. c. 68, for illegally performing stage plays, the conviction contained no adjudication of costs, but the warrant of

(*d*) *Barton v. Bricknell* 13 Q. B. 393; *Haylock v. Sparke*, 1 E. & B. 471; 22 L. J., C. P. 67; *Bott v. Ackroyd*, 28 L. J., M. C. 207; *Somerville v. Mirehouse*, 1 B. & S. 652; *Pease v. Chaytor*, 1 B. & S. 658; *Lalor v. Bland*, 8 Ir. C. L. Rep. 115; *Laurenson v. Hill*, 10 Ir. C. L. Rep. 177; *Linford v. Fitzroy*, 13 Q. B. 240.

(*e*) In an action against a magistrate for a malicious conviction, the question is not whether there was any actual ground for imputing the offence to the plaintiff, but whether, upon the hearing, there appeared to be any. The plaintiff must show a want of probable cause for the conviction, which he can only do by proving what passed upon the hearing before the magistrate when the conviction took place. The magistrate has nothing to do with the guilt or innocence of the offender, except as it appears from the evidence laid before him: Per Gibbs, C. J., in *Burley v. Bethune*, 5 Taunt. 383; see *Rogers v. Jones*, 3 B. & C. 409, and *Pease v. Chaytor*, 3 B.

& S. 620; 32 L. J., M. C. 121. Under the above statute, a justice may be acting maliciously, and without reasonable or probable cause, and yet be acting in the execution of his duty as such justice; for instance, where maliciously and without reasonable or probable cause he excites a person to bring a complaint before him, and convicts upon such complaint; *Kirby v. Simpson*, 10 Exch. 358; 23 L. J., M. C. 165; 18 Jur. 983, S. C. If a warrant of distress, or commitment, be founded on a defective order or conviction, or on one made without jurisdiction, and either the goods of the party, or his person, be taken in execution under it, the justices who made the order or conviction, not those who granted the warrant, are liable (where any action lies) for the defect in the order or conviction, or for the want of jurisdiction, provided that the warrant was granted *bona fide*, and without collusion: 11 & 12 Vict. c. 44, s. 3.

(*f*) *Barton v. Bricknell*, 13 Q. B. 393.

distress recited the conviction as if it did, and the defendant, before the issue of the warrant of distress, was detained to enforce payment of the penalty, which afterwards was levied together with the costs under the warrant: it was held that, whether they had power to adjudicate costs or not, they had not done so, and that the imprisonment and distress were "an excess of jurisdiction" within sect. 2 (*g*).

A justice, having convicted a man under the Copyright of Designs Act (6 & 7 Vict. c. 65), adjudged him to pay a penalty, and, on his not paying it, summoned him to show cause why he should not be committed in default and further dealt with according to law; counsel and attorney appeared for the defendant, but the justice refused to hear the matter in his absence, and caused him to be apprehended for neglecting to appear: it was held that such justice acted without jurisdiction, and that he could not avail himself of the latter part of sect. 2 of 11 & 12 Vict. c. 44, as to warrants for non-appearance, for, first, that part of the section did not apply to a summons after conviction; and, secondly, an appearance by counsel and attorney was sufficient (*h*).

And where a justice in Ireland issued a warrant of commitment founded on an information which disclosed no criminal offence: it was held that it could not be supported by showing that there was oral testimony of an offence, and that the justice having committed the defendant to prison on such information was not entitled to the protection of sect. 1 of 12 Vict. c. 16 (which corresponds with the English act), but must be taken to have exceeded his jurisdiction however much he acted *bonâ fide* (*i*).

The protection of a magistrate depends not on general jurisdiction over the subject-matter, but over the parti-

(*g*) *Leary v. Patrick*, 15 Q. B. 489.

266; 19 L. J., M. C. 211.

(*i*) *Lawrenson v. Hill*, 10 Ir. C. L.

(*h*) *Bessell v. Wilson*, 1 E. & B. Rep. 177.

cular matter or individual. Therefore, where a justice issued his warrant to apprehend a party to answer a charge of assault, upon a deposition taken in the absence of the justice, he not at any time seeing, examining or hearing the deponent, he was held liable to an action of trespass, although he otherwise had jurisdiction over the charge (*k*).

Justices have been held to have acted without jurisdiction within the second section, where they issued a warrant of distress to levy a contribution under an order of the Poor Law Commissioners, against a party who was not legally liable to pay it (*l*).

An action of trespass has been held to lie against a justice, who committed an offender to prison in the first instance, without previously endeavouring to levy the penalty by distress, under a statute which only authorizes the commitment as an alternative punishment in default of distress (*m*). And this decision was not affected by the statute 43 Geo. 3, c. 141, as it did not concern the regularity of the conviction, nor require that the conviction should be quashed in order to support the action.

So where two magistrates committed a defendant to prison, under the 5 Geo. 4, c. 18, s. 2, in default of sufficient goods to satisfy the amount of a penalty by distress, and the commitment was merely by parol: it was held, that they were answerable in an action of trespass, notwithstanding a warrant in writing was made out by them a few days after the commitment took place; for the detention of a party, before the warrant is signed, cannot be justified for any longer term than is necessary for making it out (*n*).

And, before 11 & 12 Vict. c. 44, where magistrates granted a warrant of distress to levy poor rates upon a party whose land that was rated was found to lie in another

(*k*) *Caudle v. Seymour*, 1 Q. B. 189.

889; *ante*, p. 20, n. (*k*). The taking of a deposition in such a case is a judicial act.

(*l*) *Newbould v. Coltman*, 6 Exc.

(*m*) *Hill v. Bateman*, 1 Str. 710.

(*n*) *Hutchinson v. Lowndes*, 4 B. & Adol. 118, *ante*, p. 319.

parish, it was held, that they were liable in an action of trespass(o).

A magistrate has no right to detain a person, who is well known, to answer a charge of misdemeanor, verbally intimated to the magistrate, but without a regular information. Thus, where a party, who had been in attendance before two magistrates, was about to leave the office, when one of the magistrates ordered him to remain, as a charge was to be preferred against him for attempting to tamper with the administration of justice, and he was forcibly detained for twenty minutes, when the charge having been regularly made, the magistrates thought it did not amount to a crime, and he was then allowed to go away: Lord *Tenterden* held, that the magistrates were answerable on an indictment for assault and false imprisonment, saying, that the magistrates ought to have had an information regularly before them, that they might be able to judge whether it charged any offence, to which the party ought to answer(p).

Neither has a magistrate the right to imprison any one for breach of the peace, unless committed within his own view, without first hearing the charge. Therefore, where a magistrate, meeting constables having in custody the plaintiff on a charge of drunkenness, ordered him to be taken back to the lock-up house, saying he would see him the next day; and the plaintiff was kept confined until then, when he was ordered by the magistrates to be fined: it was held, that it was his duty, either to have gone into the case,—or, if he could not do so, not to have interfered, but have let the officer take him before another magistrate,—and that he was liable to an action of trespass(q).

Where the plaintiff, being taken before the defendant, a

(o) *Weaver v. Price*, 3 B. & Adol. 409; *Newbould v. Coltman and another*, 6 Exch. 189; *Charleton v. Alway*, 11 A. & E. 993. See now 11 & 12 Vict. c. 44, s. 4.  
(p) *R. v. Birnie*, 1 Mood. & R.

160; 5 C. & P. 206. See *Hazeldine v. Grove*, 3 Q. B. 997, and 11 & 12 Vict. c. 4, s. 1, ante, p. 64.

(q) *Edwards v. Ferris*, 7 C. & P. 542; *Hazeldine v. Grove*, supra.



magistrate, on a complaint of having killed a dog, and refusing to adopt the recommendation to make terms, was told by the defendant, that unless he paid a certain sum, he should convict him in a penalty of that amount under the Malicious Trespass Act, which the plaintiff also rejected, and declared he would carry the case elsewhere; upon which the defendant called in a constable, and ordered him to take the plaintiff out of the office, and if the parties did not settle, to bring him in again, and he would proceed to convict him under the act; and the plaintiff accordingly went out with the constable: this was held to be sufficient evidence of an imprisonment of the plaintiff by order of the defendant, and it was also held, that there was nothing to furnish a justification for such imprisonment (*r*).

The statute 13 Geo. 3, c. 78, s. 60, imposing a penalty on the driver of a cart, &c., for riding thereon under the circumstances therein mentioned, authorized a justice, on his own view, or upon the oath of one witness, to convict the offender; and, in case the offender refused to discover his name, or the name of the owner of the cart, &c., he was subjected to a like penalty, and might, without warrant, be apprehended forthwith by the person seeing the offence committed. Where the driver of a waggon committed an offence within this act, in the view of a justice; and having placed himself before the board on which his master's name was painted, so as to prevent the discovery of the owner, the justice, in order to ascertain the name, stopped the horses, and laid hands on the driver, and removed him from his position before the board, and thereby informed himself of the ownership: it was held, on demurrer, that this was a trespass, and gave the driver a right of action (*s*).

Before leaving these two sections of 11 & 12 Vict. c. 44, it should be observed that, if the action be brought under

(*r*) *Bridgett v. Coyney*, 1 Man. & Ry. 211. 1 D. & R. Mag. Ca. 290. This statute is now repealed; see 5 & 6

(*s*) *Jones v. Owen*, 2 D. & R. 600; Will. 4, c. 50, s. 78.

the first section, it is not necessary to quash any conviction or order (t); and that, if it be brought under sect. 2, what is required to be quashed is "the conviction or order."

Action, where warrant on defective conviction.

By sect. 3 of this act, where a conviction or order is made by one or more justices, and a warrant of distress or commitment is granted thereon by another justice *bonâ fide* and without collusion, no action shall be brought against the justice who so granted the warrant, by reason of any defect in the conviction or order, or for any want of jurisdiction in the justices who made the same, but the action (if any) shall be brought against the justices who made the conviction or order.

Action for levying a poor rate or exercising a discretionary power.

By sect. 4, where any poor rate shall be made, allowed and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice granting the warrant by reason of any defect in the rate, or of such person not being liable to be rated therein; and in all cases where a discretionary power is given to a justice by any act of parliament, no action shall be brought against him for or by reason of the manner in which he shall have exercised his discretion in the execution of such power (u).

Rule of Court of Queen's Bench ordering justice to do an act, no action lies for doing it.

By sect. 5, where a justice refuses to do any act relating to the duties of his office as such justice, the party requiring the act to be done may apply to the Court of Queen's Bench, upon an affidavit of the facts, for a rule calling on the justice, and the party to be affected by the act, to show cause why it should not be done; and if after due service of such rule good cause shall not be shown against it, the Court may make it absolute, with or without or upon payment of costs; and the justice, upon being served with such rule absolute, shall obey the same, and do the act required; and no action or proceeding shall be commenced or prosecuted against the justice for having obeyed such rule and done the act (x).

(t) *Lalor v. Bland*, 8 Ir. C. L. Rep. 115. Wils. 121.

(x) A surveyor of highways, who executes a warrant issued in pur-

The remedy given by this section is not intended simply for the benefit of justices, or confined to cases in which their jurisdiction is doubtful, but it extends to all cases in which they refuse to do an act relating to the duties of their office (*y*). The Court of Queen's Bench will inquire into the validity of an order of justices, before compelling them, under this section, to issue a distress warrant to enforce it, and will refuse a rule for that purpose, if the order appear to be invalid (*z*).

By sect. 6, where a warrant of distress or commitment shall be granted by a justice upon any conviction or order, which either before or after the granting of the warrant shall have been confirmed upon appeal, no action shall be brought against such justice for anything done under the warrant by reason of any defect in the conviction or order.

After conviction confirmed on appeal, no action for anything done on warrant upon it for defect in conviction.

By sect. 7, whenever by this act it is enacted that no action shall be brought under particular circumstances, if such action be brought, a judge upon application of the defendant, and upon an affidavit of facts, may set aside the proceedings with or without costs (*a*).

If action brought, where prohibited by 11 & 12 Vict. c. 44, proceedings may be set aside.

By sect. 12, if at the trial of any action against a justice for anything done in the execution of his office the plaintiff shall not prove that the action was brought within the time limited, or that notice of action was given one calendar month before the action was commenced, or if he shall not prove the cause of action stated in the notice, or that the cause of action arose in the county or place laid as venue in the margin of the declaration, or (when the plaintiff sues in the County Court) within the district for which such

In what case nonsuit or verdict for defendant.

suance of such rule, may be liable to an action, although the justices are protected; *Freeman v. Read*, 4 B. & S. 174; 32 L. J., M. C. 226. By 20 & 21 Vict. c. 43, s. 9, no action or other proceeding shall be commenced against justices after the decision of a superior Court, on a case stated by them under the Act, by reason of any defect in the order or conviction affirmed by the Court, and enforced

by the justices; see *ante*, p. 443.

(*y*) *R. v. Aston*, 1 L. M. & P. 491, *ante*, p. 67; *R. v. JJ. Bristol*, 18 Jur. 426, n.; *In re Clee and Osborne*, 21 L. J., M. C. 112.

(*z*) *R. v. Collins and another*, *Id.* 73; 16 Jur. 422, S. C.; *R. v. Browne*, 13 Q. B. 654.

(*a*) Sects. 8, 9, 10, 11 and 13 will be found, *post*, pp. 466, 468, 469, 478.

Court is holden, the plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant (*f*).

Action for words.

Where upon a proceeding on the game laws in Scotland, after the defendant had admitted that the case was made out against him, and had appealed to the leniency of the Court for a mitigation of the penalty, on the ground of his supporting his aged father and mother by his labour,—two of the justices asserted “that he was a thief, and had been known to steal bee-hives and leather;” it was held by the House of Lords, that the justices were responsible in an action for these words, if malice was clearly made out against them; the privilege of exemption from an action for words uttered in the discharge of official duties being confined only to members of parliament and judges of the superior Courts (*g*).

Not to be sued in County Court if he object thereto.

By 11 & 12 Vict. c. 44, s. 10, no action shall be brought in any County Court against a justice for anything done by him in the execution of his office, if he object thereto, and if, within six days after being served with a summons in any such action, he, or his attorney or agent, give a written notice to the plaintiff, that he objects to being sued in such County Court for such cause of action, all proceedings afterwards had in such County Court in the action shall be null and void (*h*). It may also be added, that by 1 & 2 Vict. c. 74, s. 5, no action or prosecution lies against justices issuing a warrant under that act for delivering up the possession of tenements after due determination of the tenancy, nor against any officer by whom it has been executed, by reason that the person on whose application it was granted had not lawful right to the possession of the premises (*i*).

When not liable in respect of warrant for possession of tenements.

(*f*) See *post*, p. 466, as to limitation of action, notice of action and venue.

(*g*) *Allardice v. Robertson*, 1 Dow, 495. But an action will not lie against a magistrate for words spoken of a witness, in pronouncing judg-

ment. *Kendillon v. Maltby*, 2 Moo. & Rob. 438.

(*h*) See *Kirby v. Simpson*, 10 Exch. 358.

(*i*) See *Jones v. Chapman*, 14 M. & W. 124.



## SECT. 2.—Of the Formalities in Actions against Justices.

1. <i>In what county</i> . . . . .	465	4. <i>Notice of Action</i> . . . . .	467—469
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1. By the statute 21 Jac. 1, c. 12, s. 5, actions against magistrates, for any thing done in the execution of their office, could only be brought in the county in which the fact complained of was done. This act is now repealed, so far as it relates to this subject (*k*); but by s. 10 of 11 & 12 Vict. c. 44, in every such action the venue shall be laid in the county where the act complained of was committed (*l*); or in action in the County Court, the action must be brought in the Court within the district of which the act complained of was committed. In what county.

2. There are other provisions made by the legislature for the security of magistrates in the execution of their duty, among which is the limitation of time within which actions can be brought against them. Limitation as to time.

By 11 & 12 Vict. c. 44, s. 8, no action shall be brought against any justice *for any thing done by him in the execution of his office*, unless such action be commenced within six calendar months next after the act complained of shall have been committed (*n*).

Upon a similar clause it had been held, that the justice

(*k*) 11 & 12 Vict. c. 44, s. 17.

(*l*) And see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. In such case, since the division of the county of Lancaster by stat. 3 & 4 Will. 4, c. 71, s. 4, the venue should be laid in "the northern" or "southern division" of the county, according to the division in which the cause of action arose; *Atkinson v. Hornby*, 2 C. & K. 335.

(*n*) A similar provision was contained in 24 Geo. 2, c. 44, s. 8, now

partially repealed by s. 17 of 11 & 12 Vict. c. 44; and see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. As to the meaning of the words "act complained of," see *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 71; *ante*, pp. 55, 361. Provision is also made for protecting magistrates and constables under the Metropolitan Police Acts; see 10 Geo. 4, c. 44, s. 41; 2 & 3 Vict. c. 71, ss. 52, 53; see *Breese v. Jerdein*, 4 Q. B. 585.

was answerable for such part of an imprisonment under his warrant as was within six calendar months of the commencement of the action, though the commitment was beyond that time (*o*).

In computing the six months, in an action against a justice for false imprisonment, where the imprisonment expired on the 14th December, and the writ was sued out on the 14th June following, it was held, that the former day was to be excluded, and that the action was therefore brought in time (*p*).

Under 53 Geo. 3, c. 127, s. 12, which requires the action for anything done in pursuance of it to be brought within three calendar months after the *fact committed*, it was held, that an action for taking and selling plaintiff's goods under a warrant of distress for arrears of church-rate, might be brought within three calendar months of the *sale* (*q*), *Parke, B.*, there said, "the statute directs the arrears to be levied by distress and sale, and the 'fact committed' under colour or in pursuance of the statute, is not merely the seizure, but the sale also. The seizure of the goods is made not absolutely, but with a view to their detention only until the amount should be paid, and their subsequent sale if it should not; and the seizure, when the sale has taken place, is but part of the entire act complained of, and which forms the real grievance to the plaintiff: and, in this circumstance, distinguishes the present case from those of *Godin v. Ferris* (2 H. Bl. 14); *Saunders v. Saunders* (2 East, 254); and *Crook v. M'Tavish* (1 Bing. 167); in all which the seizure was for a forfeiture, and was in its nature absolute, and must be

(*o*) *Massey v. Johnson*, 12 East, 75, 76; Bull, N. P. 24, on 24 Geo. 2. c. 44, s. 8, *ante*, p. 55, n. (*h*). See *Eggington v. The Mayor, &c., of Lichfield*, 5 El. & Bl. 100; 1 Jur. (N. S.) 908; 24 L. J., Q. B. 360, S. C., and cases there cited.

(*p*) *Hardy v. Ryle*, 9 B. & C.

603; 4 Man. & Ry. 295; 2 Man. & Ry. Mag. Ca. 301, and see *ante*, p. 55; *Collins v. Rose*, 5 M. & W. 194.

(*q*) *Collins v. Rose*, *supra*; and see *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

considered "as intended to deprive the plaintiff of his property immediately."

The suing out of the writ is the commencement of the action. But where a writ had been sued out in time, but not served or returned, an *alias* writ out of time could not, it was held, be connected with the first by continuance, so as to support the action (*r*). Unless the record shows that the action was brought in proper time, the plaintiff must produce the writ of summons in evidence (*s*).

3. For the further security of justices, it is provided by 11 & 12 Vict. c. 44, s. 9, "That no action shall be commenced against any such justice (*t*) until one calendar month at least after a *notice in writing* of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the Court in which the same is intended to be brought (*u*), shall be clearly and explicitly stated; and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent (*x*).

Notice of action.

By section 12, this notice must be proved on the trial; and, in default of proof, the plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

(*r*) *Weston v. Fournier*, 14 East, 492; see *Mayhew v. Locke*, 2 Marsh. 377; 7 Taunt. 63. A renewed writ is substituted for the *alias* writ by 15 & 16 Vict. c. 76, ss. 10, 11.

(*s*) *Johnson v. Smith*, 2 Burr. 964; *Cox v. Painter*, 6 A. & E. 491. The *Nisi Prius* record specifies the date of the issuing of the writ. Reg. Gen. Hil. T. 1853, sched. 1 and 2.

(*t*) *I. e.*, any justice of the peace for anything done by him in the

execution of his office; *Kirby v. Simpson*, 10 Exch. 358.

(*u*) See *Tidd's Prac.*, 9th edition, 30; 2 *Chitty's Statutes* by Welsby & Beavan, p. 713, n. (*e*); *R. v. Biggs*, 3 P. Wms. 419.

(*x*) This is the same in substance as the provisions in the partially repealed act, 24 Geo. 2, c. 44; see also 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71.

Tender of  
amends and  
payment into  
Court.

And by section 11, the justice, at any time after such notice given, and before the commencement of the action, may *tender amends* to the party complaining, or his attorney or agent, and the justice also at any time before issue joined, if he has not made such tender, or in addition to such tender, may pay money into Court, which tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue (*y*); if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, or beyond the sums so tendered and paid into Court, they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much as shall be sufficient to satisfy the defendant's costs, shall thereupon be paid out to him, and the residue, if any, shall be paid to the plaintiff. If, where money is so paid into Court, the plaintiff elect to accept the same in satisfaction, he may obtain from any judge of the Court in which the action is brought an order for the money to be paid out to him, and the defendant shall pay him his costs, to be taxed, and thereupon the action shall be determined, and the order shall be a bar to any other action for the same cause. The sum tendered need not be paid into Court, and, therefore, unless the plaintiff accepts it at the time of tender (which he may do, and go for more), he may lose the sum tendered altogether (*z*).

By the same section, the justice is allowed to pay money

(*y*) See *Thompson v. Jackson*, 1 M. & S. 246, n.; *Cave v. Mountain*, *Id.* 257, n.; see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. And where payment of money into Court was pleaded specially, justices were not bound to state the character in which they made the payment; *Aston v. Perkes and another*, 15 M. & W. 385;

and see *Jones v. Gooday*, 9 *Id.* 736; *Thompson v. Sheppard*, 24 L. J., Q. B. 5. As to paying the money into Court after issue joined, see *Nestor v. Newcome*, 3 B. & C. 159; *Devaynes v. Boys*, 7 Taunt. 33; *Casbourn v. Ball*, 2 Bl. R. 859.

(*z*) *Jones v. Gooday*, 9 M. & W. 736.



into Court, if he has neglected to tender amends, or has tendered insufficient.

The *month* is to be calculated exclusively both of the day of the notice, and of the day of commencing the action (*a*); if given on the twenty-eighth of a month, the action may be commenced on the twenty-ninth of the following one, whatever the length of the preceding month (*b*). The notice may be given before the quashing of the order, the act done being the cause of action; although the action itself cannot be brought until after the order is quashed (*c*).

Time of  
notice, how  
reckoned.

Wherever the act complained of is one which has been done by a magistrate, intending to act as such, however mistaken, upon a subject-matter within his jurisdiction, he is entitled to a notice under this act (*c*). And although the subject-matter of complaint may arise out of the local jurisdiction of the justice, yet if he has authority over the subject-matter, he is still entitled to notice (*d*).

When neces-  
sary.

The same doctrine was also laid down in the following case of a person convicted of riding on the shafts of his cart on the king's highway. It appeared, that at the time the man was on the shafts, his cart was standing still, and consequently the case was not within the statute, inasmuch as the cart was not in motion; but he was nevertheless convicted by the justice; and the question was, whether the justice was entitled to notice of action. The Court said, it was immaterial whether the justice had a right, or not, to act in the way complained

(*a*) *Young v. Higgon*, 8 Dowl. 212; 6 M. & W. 49, S. C.; *ante*, p. 52.

(*b*) *Freeman v. Read*, 4 B. & S. 174; 32 L. J., M. C. 226.

(*c*) *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67.

(*d*) In an action against a justice for committing the mother of a bastard child by his *single* warrant, the statute 18 Eliz. c. 3, requiring it

to be by *two*, it was held, that he was entitled to notice within the 24 Geo. 2, c. 44; *Weller v. Toke*, 9 East, 364. In *Styles v. Cox*, Vaughan, 111, justices and officers of peace, however wrong, were held to be within the privilege of 21 Jac. 1, c. 12.

(*d*) *Prestidge v. Woodman*, 1 B. & C. 13; 2 D. & R. 43; 1 D. & R. Mag. Ca. 502.

of; for if he had a right to act at all, he was clearly entitled to notice (*e*).

And notwithstanding the privilege of a justice of the peace cannot be claimed, where the act is altogether *alio intuitu*, yet, if it be upon a matter within the general jurisdiction of justices of the peace, one, who is in fact such, will be presumed to have acted in that character, so as to entitle him to the privileges of the statute. Thus, a lord of a manor, who was also a justice of peace, was held to be entitled to notice, previous to an action brought against him for taking a gun in the house of an unqualified person; for it was intended, that he acted as a justice of the peace, according to the powers given by the act, then in force, of 5 Ann. c. 14 (*f*).

The law then, as to the right to notice of action, seems to depend on these two points: first, whether the magistrate has jurisdiction over the subject matter; and, secondly, whether he was *bonâ fide* acting as a magistrate at the time he did the act complained of; and this last question is a proper one for the consideration of the jury (*g*).

Thus, where a magistrate, after a disturbance on the liberation of a prisoner, had seized the plaintiff by the collar, and detained him until a constable came up, who told the magistrate that the plaintiff was not one of the persons engaged in the riot,—which was, in fact, then taking place at some distance, but there was no dis-

(*e*) *Bird v. Constable*, 2 D. & R. 45, n. (*a*) S. C. by the name of *Bird v. Ganston*, 2 Chitt. 459. In a case where two parties were jointly convicted before two justices of an assault, and a *joint* fine imposed on them, and the conviction for this cause held bad in substance, the reporters in their marginal note add, that the justices were not entitled to the protection of the 24 Geo. 2, c. 44, in an action of trespass for levying the amount; but this point does not,

in the report of the case itself, appear to have been in any way raised either in the argument of the counsel, or the judgments pronounced from the bench; *Morgan v. Brown*, 6 Nev. & M. 57; and it is omitted in another report of the same case, see 4 A. & E. 515.

(*f*) *Briggs v. Evelyn*, 2 H. Bl. 114.

(*g*) *Cox v. Reid*, 13 Q. B. 558; see per Parke, B., *Kirby v. Simpson*, 10 Exch. 358.

turbance near the spot,—it was held, that it was a question for the jury, whether the defendant was acting *bonâ fide* as a magistrate, or not; and if not, he was not entitled to notice of action (*h*).

But it is not because a justice may have no defence to the action, that he is not entitled to notice. For where a magistrate seized the plaintiff's goods, alleging at the time that they were stolen, and it was found that he acted *bonâ fide* under that impression, and believed that he was acting in the execution of his duty: it was held, that he was entitled to notice of action, although the jury found that he had no reasonable ground to suppose the property had been stolen (*i*).

The object of the statute, however, is to protect justices accidentally committing an error in the discharge of their duties, and not where the thing is done for their own personal benefit. Therefore, where the mayor of an ancient borough, being also a justice of the peace, took a fee of four shillings from a publican resident within the borough for renewing his licence; although it appeared that, for sixty-five years, a similar fee had been uniformly received by the mayor for the time being from every publican within the borough applying to have his licence: it was held that such fee was illegal, and might be recovered back in assumpsit for money had and received, without notice of action; for the fee, being taken by the mayor for his own personal benefit, could not be considered as being done in the execution of his office, for this was confined to the granting of the licence (*h*).

And where the defendant has no legal authority to act as a justice of the peace, he is, of course, not entitled to notice of action. By the charter of a borough, the aldermen had power and authority to execute by themselves,

(*h*) *James v. Saunders*, 10 Bing. 429; 4 Moo. & S. 316.

(*k*) *Morgan v. Palmer*, 2 B. & C. 729; 4 D. & R. 433; 2 D. & R.

(*i*) *Wedge v. Berkeley*, 1 Nev. & Mag. Ca. 232.  
P. 665; *post* p. 472.

or, in their absence, by their deputies, the office of aldermen; and by a clause in the charter, the aldermen for the time being were constituted, while they remained in office, keepers and justices of the peace in the borough. The defendant had been appointed deputy to one of the aldermen; and it was contended, that under this appointment he had power and authority to act not only as an alderman, but as a justice of the peace, and was therefore entitled to notice of action under the statute. But it was held, that although an alderman might appoint a deputy alderman, he could not appoint a deputy justice; and that the defendant, therefore, was not entitled to notice (*l*).

With regard to these statutory protections in general, it may be remarked, that they suppose an illegality, as otherwise no protection would be needed (*m*). They are meant for the protection of honest persons, who *bonâ fide* mean to discharge their duty (*n*), and these provisions should be construed liberally, in conformity with this object (*o*).

The reasonableness of the belief is properly taken into consideration in determining whether there was a *bonâ*

(*l*) *Jones v. Williams*, 3 B. & C. 762; 5 D. & R. 654; 2 D. & R. Mag. Ca. 537. See per Parke, B., *Hughes v. Buckland*, 15 M. & W. 356; *Bush v. Green*, 4 Bing., N. C. 41; *Lidster v. Borrow*, 9 A. & E. 654.

(*m*) *Hazeldine v. Grove*, 3 Q. B. 997, 1006; *Barnett v. Cox*, 9 Q. B. 617; *Read v. Coker*, 13 C. B. 850; 22 L. J., C. P. 201, S. C.

(*n*) Per Parke, B. in *Jones v. Goaday*, 9 M. & W. 743, or as Mr. Baron Alderson said in another case, "The object of the Act of Parliament is to protect honest ignorance;" *Horn v. Thornborough*, 18 L. J., Exch. 351; 3 Exch. 846, S. C. In *Kirby v. Simpson*, 10 Exch. 358, it was held, that a magistrate acting in the execution of his office was entitled to notice of action under

11 & 12 Vict. c. 44, s. 9, in an action on the first count of that statute, alleging malice and the absence of reasonable and probable cause, but founded upon an act done by him as a magistrate, Parke, B., saying, "the plaintiff in this action proceeds against the defendant solely in his character as a magistrate, and a notice of action is required by the statute, that the magistrate may have the opportunity of tendering amends. I may add that these observations apply only to this statute (11 & 12 Vict. c. 44) and not to those cases which may arise under various acts of Parliament affording protection to persons who act under a *bona fide* belief that they are acting under the provisions of the particular act, which is supposed to give them authority."

(*o*) *Smith v. Hopper*, 9 Q. B. 1005.

*fide* belief of acting in pursuance of authority; but otherwise it is immaterial, the real question being, did the defendant honestly intend to put the law in force, and really believe that the plaintiff had committed the offence imputed to him, although there was no reasonable cause for such belief (*p*). The question has been thus succinctly stated—Did the defendant honestly believe in the existence of such a state of facts as would, if it had existed, have afforded a justification? (*q*)

In order to entitle a party to notice of action, it is not necessary that he should, at the time of acting, be cognizant of the statute giving him the privilege (*r*). It is for the judge to decide whether a notice of action is necessary (*s*).

The question of *bona fides* is, it seems, for the jury (*t*),

(*p*) *Hermann v. Seneschal*, 32 L. J., M. C. 43; *Wedge v. Berkeley*, 1 Nev. & P. 665.

(*q*) *Hermann v. Seneschal*, *suprà*, and *Roberts v. Orchard*, 33 L. J., Exch. 65 (Exch., Ch.); see also *Hazeldine v. Grove*, 3 Q. F. 1007; *Smith v. Hopper*, 9 Q. B. 1005; *Thomas v. Stephenson*, 2 E. & B. 108; *Arnold v. Hamel*, 9 Exch. 405; and as to the construction put upon the words "in pursuance," or "in execution of the act;" or "found committing an offence," *Read v. Coker*, 13 C. B. 850; *Horley v. Rogers*, 2 El. & El. 674; 29 L. J., M. C. 140; 24 & 25 Vict. c. 96, ss. 103, 113, and c. 97, ss. 61, 71; *ante*, p. 90, and *post*, p. 494; 1 Chit. Stats. by Welsby, 261, n.; *Davis v. Curling*, 8 Q. B. 286; *Read v. Coker*, 13 C. B. 850; *Booth v. Clive*, 10 C. B. 827; *Kent v. The Great Western Railway Company*, 3 Id. 714; *Bartholomew v. Carter*, 4 M. & G. 612; *Norris v. Smith*, 10 A. & E. 188; *Shatwell v. Hall*, 2 Dowl. (N. S.) 567; 10 M. & W., S. C.; *Kine v. Evershed*, 10 Q. B. 143.

(*r*) *Read v. Coker*, 13 C. B. 850.

(*s*) *Kirby v. Simpson*, 10 Exch. 358.

(*t*) *Cox v. Reid*, 13 Q. B. 558;

*Panton v. Williams*, 2 Q. B. 169; *Smith v. Hopper*, 9 Id. 1009; but see *Kirby v. Simpson*, 10 Exch. 358; 23 L. J., M. C. 165, S. C.; *Arnold v. Hamel*, 9 Exch. 404. and 1 Taylor, Ev., p. 52, s. 32 (4th ed.) As to *bona fides* in the owner of property under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30 (now repealed by 24 & 25 Vict. c. 95, but re-enacted in this respect by sect. 71 of 24 & 25 Vict. c. 97), entitling him to notice of action, see *Horn v. Thornborough*, 3 Exch. 846; *Parrington v. Moore*, 2 Id. 223; *Hughes v. Buckland*, 15 M. & W. 346; *Reed v. Cowmeadow*, 6 A. & E. 661; *Wedge v. Berkeley*, Id. 663; *Cann v. Clipperton*, 10 Id. 582; *Rudd v. Scott*, 2 Sc. N. R. 631; *Kine v. Evershed*, 10 Q. B. 143. *Bona fides*, although entitling to protection, does not of itself amount to a defence, unless expressly so declared by statute; see *Stamp v. Sweetland*, 8 Q. B. 13; *Prickett v. Gratrex*, Id. 1020; *Thomas v. Stephenson*, 2 El. & Bl. 108; 11 & 12 Vict. c. 44, s. 2. *Quære*, whether, having reference to the words, "anything done in execution of the act," notice of action is required for nonfeasance, as well as for misfeasance? *Joale v. Taylor*, 7 Exch. 58.

although it is often submitted to the judge as a ground of nonsuit; and if, in such case, the plaintiff does not desire the matter to be submitted to the jury, he must abide by the decision of the judge, if the Court think it warranted by the evidence (*u*).

Form of the  
notice.

The notice must be precise in complying with the directions of the act (*x*). The statute, it has been declared, was made to introduce a strictness of form, in favour of magistrates; it must, therefore, be observed literally, and admits of no equivalent (*y*).

The former act, 24 Geo. 2, c. 44, required that the notice should contain two things, viz. the writ or process, and the cause of action (*z*). The statute now in force upon the subject (11 & 12 Vict. c. 44, s. 9) requires the cause of action, and the Court in which the action is to be brought, to be stated. In stating the cause of action it is sufficient to inform the defendant substantially of the ground of complaint (*a*). If the cause of action be under the first section of 11 & 12 Vict. c. 44, the notice should state that the act was committed *maliciously*, and without reasonable and probable cause (*b*). It should specify the place where the act complained of was committed (*c*). It has been held sufficient to state the imprisonment to have been in "a certain common gaol or prison in the borough of Monmouth" (*d*), or "at the parish of —, in the borough of —" (*e*).

(*u*) *Hazeldine v. Grove*, 3 Q. B. 997, 1006; *Barnett v. Cox*, 9 *Id.* 617.

(*x*) Per Lord Kenyon, 7 T. R. 835.

(*y*) *Per curiam*, *Taylor v. Fenwick*, cited 7 T. R. 635.

(*z*) 7 T. R. 634; and see *Robson v. Spearman*, 3 B. & A. 493; *Gimbert v. Coyney*, 3 D. & R. Mag. Ca. 323; *Prickett v. Gratrex*, 8 Q. B. 1021; *Hollingworth v. Palmer*, 4 Exch. 267.

(*a*) *Jones v. Bird*, 5 B. & Ald. 837; 1 D. & R. 497.

(*b*) *Taylor v. Nesfield*, 3 El. & Bl. 724; 23 L. J., M. C. 169; 18 Jur. 747, S. C.; *Tarrant v. Baker*, 14 C. B. 199.

(*c*) *Martins v. Upcher*, 3 Q. B. 662; *Breese v. Jerdein*, 4 *Id.* 585; *Jacklin v. Fytche*, 14 M. & W. 381.

(*d*) *Prickett v. Gratrex*, 8 Q. B. 1021.

(*e*) *Leary v. Patrick*, 15 Q. B. 266.

The notice, according to the act (*g*), must be given by the party intending to commence the action, or by his attorney or agent; and the name and place of abode of the party intending to sue, and also the name of the attorney or agent, together with his place of abode or business (where the notice has been served by an attorney or agent), are required to be indorsed on the notice. Under this regulation, it is sufficient, as regards the attorney, for him to describe himself of the town where he resides, as "of Birmingham" (*h*); or of the place where he carries on his business, although he resides elsewhere (*i*). The place, however, from which the notice is dated must be so mentioned as to intimate that it is the place of the attorney's residence or business. Therefore, a notice signed by the attorney in this manner, "given under my hand at Durham," was held to be defective, in not expressing sufficiently that Durham was the place of the attorney's residence, as the statute requires (*k*). So, where the attorney described himself in the notice, of a certain place, as "in *London*," which was in fact *Westminster*, this was deemed a fatal objection (*l*). The signature of the attorney to the notice need not set out the christian name at length, the initial is sufficient (*m*). It is no objection to the notice that a different person appears to be the attorney on the record (*n*), or that it has been indorsed by a firm, the attorney on the record being

(*g*) *Ante*, p. 467.

(*h*) 3 B. & P. 551. In actions against officers of excise, the 23 Geo. 3, c. 70, s. 30, required the name and place of abode of the attorney to be specified in the notice; under this act, a notice signed, "*Downe and Cox, Furnival's Inn*, attorneys for the plaintiffs," was held to contain a sufficient designation of their residence; *Wood v. Folliott*, 3 B. & P. 522, n.

(*i*) *Roberts v. Williams*, 5 Tyr.

583; 2 Cr. M. & R. 561; 4 Dowl. 486, S. C.

(*k*) *Taylor v. Fenwick*, cited 7 T. R. 635.

(*l*) 6 Esp. Ca. 138.

(*m*) *James v. Swift*, 4 B. & C. 681; 6 D. & R. 625; 3 D. & R. Mag. Ca. 302.

(*n*) *Roberts v. Williams*, *supra*; and see where notice was given by a *prochein amy* for an infant, and a different one appeared on the record, *De Gondouin v. Lewis*, 10 A. & E. 117.

one member of the firm (*o*); or that it has been signed by the plaintiff, indorsed by the attorney, and served by the attorney's clerk (*p*). The party may be described in the notice as what he really is, *e. g.* a dealer, although he is described in the commitment as a labourer (*q*). Where it was given on behalf of two parties, one of whom was dead at the time, it was held to be bad (*r*).

As the action is confined by the statute to the cause of action contained in the notice, and the action, by sect. 8, must be commenced within six calendar months after the act complained of, it must necessarily be brought within six months of the notice. Therefore, where the writ upon which the action was founded was more than six months after the notice, the action failed, although there had been a prior writ issued in time, but never served, or returned so as to be capable of being continued, and though there had been a continuing cause of action to the time of suing out the second writ (*s*); for, in that case, the first writ, which was in time, would not support the declaration,—and the subsequent cause of action, to which the second writ might apply, was not included in the notice. But where a notice of the intended process and cause of action was duly served; and the plaintiff, having issued a writ of *quo minus* against the justice only, in a few days abandoned that writ, and issued another against the justice and the constable: it was held, that the notice was sufficient to warrant the latter writ and the proceedings thereupon (*t*).

The act of 2 Geo. 3, c. 28 (the Bum-boat Act), which gives protection to justices in cases of actions brought on account of anything done by them in pursuance of that

(*o*) *Hollingworth v. Palmer*, 4 Exch. 267.

(*p*) *Morgan v. Leach*, 10 M. & W. 558.

(*q*) *Mason v. Barker*, 1 C. & K. 100.

(*r*) *Pilkington v. Riley*, 3 Exch. 739.

(*s*) *Weston v. Fournier*, 14 East, 491.

(*t*) *Jones v. Simpson*, 1 Cr. & J. 174; 1 Tyr. 32.



act, has been held not to deprive them of the right to the notice of action required by the 24 Geo. 2, c. 44; and therefore the notice of action on the former statute was required to be conformable to the notice required by the last-mentioned act (*u*).

The reason of requiring notice of action was, to give the defendant an opportunity of tendering amends, which he is enabled to do by the eleventh section of the act (*x*).

By the statute 11 & 12 Vict. c. 44, s. 10 (following in substance 21 Jac. 1, c. 12, s. 5), in any action against justices of peace, for any matter done in execution of their office, they may plead the general issue, and give the special matter in evidence. In the margin of the plea, the words "by statute," together with a reference to the act and a statement that it is a public or a private act (as the case may be) must be inserted. Where the defendant pleaded "not guilty by statute," the Court, upon the affidavit of the plaintiff that he could not discover the statute under which the defendant meant to justify, ordered that the defendant should point out the statute within three days, or that the words "by statute" should be struck out of the margin of the plea (*y*); and now, by Reg. Gen. Hil. T. 1853 (Pleading), r. 21, "in every case in which a defendant shall plead the general issue, intending to give the special matter in evidence by virtue of an act of parliament, he shall insert in the margin of the plea the words 'by statute,' together with the year or years of the reign in which the act or acts of parliament upon which he relies for that purpose were passed, and also the chapter and section of each of such acts, and shall specify whether such acts are public or otherwise, otherwise such plea shall be taken not to have been pleaded by virtue of any act of parliament; and such memorandum shall be

Pleading  
general issue.

(*u*) *Rogers v. Broderip*, 9 D. & R. 194; 4 D. & R. Mag. Ca. 123.      v. *Spearman*, 3 B. & Ald. 493.  
(*y*) *Coy v. Lord Forester*, 8 M. & W. 312.  
(*x*) *Ante*, p. 468; and see *Robson*

inserted in the margin of the issue and of the *Nisi Prius* record." In an action of trespass against a magistrate, the Court of Common Pleas allowed the defendant to amend his plea of "not guilty by statute," by inserting in the margin statutes necessary to justify the trespass complained of, after verdict for the defendant and a rule *nisi* had been obtained to set it aside (z).

The plea of tender of amends, under 24 Geo. 2, c. 44, must have been pleaded specially, and was allowed to be pleaded, together with the general issue (a); but now, as we have seen, it may be given in evidence under the general issue by 11 & 12 Vict. c. 44, s. 9.



### SECT. 3.—*Of Evidence, Damages and Costs in Actions against Magistrates.*

1. Evidence .....	478		2. Damages .....	480
3. Costs .....	480			

Evidence.

We have already considered what is incumbent on the plaintiff to prove in an action against a magistrate for acts done in the execution of his office (b), and how far proof of a subsisting conviction protects the magistrate (c).

In trespass against the mayor of a borough for having issued a warrant under 5 & 6 Will. 4, c. 76, for the levying of a borough rate, the plaintiff, in order to prove the warrant, called as a witness the high constable of the borough, who had been served with a *subpœna duces tecum*; he stated that he had deposited it in his office, had searched there, but could not find it; did not know what

(z) *Edwards v. Hodges*, 15 C. B. 474; 24 L. J., M. C. 81, S. C.; see also *Mellor v. Leather*, 1 El. & Bl. 619; *Thomas v. Stephenson*, 2 Id. 108; *Harvey v. Hudson*, 20 L. J., Exch. 11.

(a) *Ante*, p. 468.

(b) *Ante*, p. 451.

(c) *Ante*, p. 455. See also Taylor, Ev. (2nd ed.) ss. 1203—1206.

had become of it, and that the town clerk had access to his office. It was held, that secondary evidence might thereupon be given of the contents of the warrant (*d*), although a notice to produce the warrant had not been served on the defendant, nor had the town clerk been served with a *sub-pœna duces tecum*. In an action against a magistrate for false imprisonment, under a warrant, proof that the signature to the warrant is in the handwriting of the defendant is *primâ facie* evidence against him that the warrant was issued by him (*e*); and if the warrant be put in evidence by the plaintiff, the defendant may use a recital in it of an information on oath, in consequence of which the warrant was granted by him, as evidence of that fact, although the warrant has been quashed (*f*).

Where the warrant recited a conviction, adjudging the defendant to pay a penalty and a sum for costs, and directed them to be levied by distress, but the conviction drawn up and given in evidence was silent as to costs, and there was no evidence that in fact the justices had adjudicated upon them, the warrant was held to afford no justification for the seizure of the plaintiff's goods or the detainer of his person (*g*). In an action against a magistrate and a constable, for false imprisonment, evidence of what passed before the magistrate was held admissible as part of the alleged illegal transaction, but what was said by the constable before any joint act proved was held not admissible (*h*).

The commencement of the action appears by the record, or if the date of the writ be omitted in the record, it may

(*d*) *Fernley v. Worthington*, 1 M. & G. 491.

(*e*) *Mason v. Barker*, 1 C. & K. 100.

(*f*) *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67; 17 Jur. 731, S. C., and see the cases there cited.

(*g*) *Leary v. Patrick and another*, 15 Q. B. 266. The acts were held to be in excess of jurisdiction within 11 & 12 Vict. c. 44, s. 2. See also 11 & 12 Vict. c. 43, s. 18, and *ante*, p. 458.

(*h*) *Edwards v. Farris*, 7 C. & P. 542.

be proved by the production of the original writ of summons (*i*).

#### Damages.

Where a magistrate committed a person to prison, in a case in which he had no jurisdiction, he was held by *Erskine, J.*, at Nisi Prius, to be liable for all the circumstances that usually attend the execution of a warrant of commitment, such as the party being handcuffed, and having his hair cut short in the prison, but not for violence or excess on the part of the officer (*h*).

By sect. 13 of 11 & 12 Vict. c. 44, in all cases where the plaintiff in any such action shall be entitled to recover, and shall prove the levying or payment of a penalty or sum of money under any conviction or order as parcel of his damages, or that he was imprisoned, and therefore seeks to recover damages, he shall not recover the amount of such penalty or sum so levied or paid, or any sum beyond two-pence as damages for such imprisonment (*l*), or any costs, if it shall be proved that he was actually guilty of the offence, or liable by law to pay the sum he was so ordered to pay and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted.

#### Costs.

The statute 24 Geo. 2, c. 44, s. 7, provided that if the plaintiff, in such action against a justice, should obtain a verdict, and the judge should, in open Court, certify the injury to have been wilfully and maliciously committed, he should be entitled to double costs. But double costs are now abolished in all cases (*m*); and by 11 & 12 Vict. c. 44,

(*i*) *Cox v. Painter*, 6 A. & E. 491; *Haylock v. Sparke*, *supra*.

(*h*) *Mason v. Barker*, 1 C. & K. 100; but see *Cave v. Mountain*, 1 M. & G. 25, *ante*, p. 454. The principle of constructive or actual knowledge of consequences is applied to the measure of damages in actions of contract, *Hadley v. Barendale*, 9 Exch. 341; see *Barton v. Bricknell*, 20 L. J., M. C. 2, n. (3); *Foxhall v. Barnett*, 23 L. J., Q. B. 7; *Pease v.*

*Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121, 127, as to recovering by way of special damage the costs of quashing the conviction. See *Mason v. Barker* as to including in damages the amount of the penalty which had been paid by the plaintiff.

(*l*) *Quære*, when the action is for seizing goods? *Barton v. Bricknell*, 20 L. J., M. C. 2, n. (3).

(*m*) 5 & 6 Vict. c. 97, s. 2.

s. 14, if the plaintiff recover a verdict, or defendant allow judgment to go by default, the plaintiff shall be entitled to costs as if this act had not passed; or if it be stated in the declaration, or in the summons and particulars in the County Court, that *the act was done maliciously, and without reasonable and probable cause*, the plaintiff, if he recover a verdict for any damages, or if defendant let judgment go by default, shall be entitled to his full costs of suit, *to be taxed as between attorney and client*; and the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs as between attorney and client.

The statute 24 Geo. 2, c. 44, having by sect. 6, enacted, that the constable or officer executing the warrant should not be sued but in conjunction with the justice, provides, with regard to the costs in such joint action, that if the jury find a verdict for the constable,—as they are bound to do, on production of the warrant,—and shall find a verdict against the justice; in such case the plaintiff shall recover his costs against the justice, to be taxed in such manner as to include the costs the plaintiff is liable to pay to the defendant, for whom a verdict has been found.

The plaintiff's right to costs under the above statute is, as we have just seen, further restricted in cases coming within the 13th section of 11 & 12 Vict. c. 44, which enacts, that in those actions to which it extends, the plaintiff shall not be allowed any costs whatever, if it shall be proved that he was guilty of the offence of which he was convicted, or liable to pay the sum ordered, and did not undergo any greater punishment, by way of imprisonment, than that assigned by law (o).

(o) *Ante*, p. 480.

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### SECT. 4.—*Information against a Magistrate for wrongful Conviction.*

1. <i>When granted</i> .....	482	4. <i>Exculpatory Affidavit</i> .....	485
2. <i>When moved for</i> .....	484	5. <i>Defendant appearing for Judgment</i> .....	486
3. <i>Costs</i> .....	485		

When granted.

If the misconduct of magistrates, besides being productive of private injury, be such as to call for punishment upon public grounds,—as where it proceeds, not from error, but from private interest or resentment,—the Court of Queen's Bench will direct an information to be filed by the officer of the Court against the offender, upon a proper application supported by affidavits.

But an information is never granted for an irregularity, arising merely from ignorance or mistake (*p*).

An information, however, has been granted for convicting, without any previous summons (*q*), and for refusing sufficient bail, in a bailable misdemeanor, on account of the personal character and opinions of the parties tendered as bail (*r*).

And on a motion for an information (*s*) against a justice, for not having stated the defendant's evidence in a conviction, when it was necessary to do so,—though the Court refused the rule, upon the ground that the magistrate might have been misled by the authority of a former decision upon a similar conviction,—it at the same time expressed so strong an opinion upon its being clearly the duty of a magistrate to set out all the evidence fairly, as to induce the conclusion that, but for the ground of palliation, the information would have been granted.

(*p*) See Lord Mansfield's judgment, *R. v. Cozens*, Doug. 426; and *R. v. Fielding*, 2 Burr. 720. It will not be granted *on behalf* of a magistrate, for unwritten words imputing to him malversation in his office, if the words were not spoken at the time when he was acting, and did not tend to a breach of the peace;

*Ex parte Duke of Marlborough*, 5 Q. B. 955; and see *R. v. Burn*, 7 A. & E. 190.

(*q*) *R. v. Allington*, 1 Str. 678; see the circumstances stated, *R. v. Venables*, 2 Ld. Raym. 1405; 1 Str. 640; see also *R. v. Harwood*, 2 Str. 1088.

(*r*) *R. v. Badger*, 4 Q. B. 468.

(*s*) *R. v. Lovet*, 7 T. R. 152.

The grounds upon which the Court may think it proper to interfere are too indefinite to admit of any fixed rule ; but, in general, it may be stated, that, wherever, the powers vested in justices for the summary execution of penal laws are exerted from corrupt or personal motives, this mode of punishment will be extended.

But an irregularity, however great, unless it partakes of those motives, will not be visited in this way. Thus, where an information was moved for against two justices of the peace and others, for a misdemeanor, relating to the conviction of a poacher, the Court, upon consideration of the circumstances attending it, discharged the rule with costs to be paid to *the justices*, but without costs to the others ; and the Court were, upon this occasion, most explicit in their declaration, “ that, even where a justice of peace acts *illegally*, yet, if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or illegal intention whatsoever, the Court will not punish him by this extraordinary course of an information, but leave the party complaining to the ordinary legal remedy or method of prosecution, by action, or by indictment” (*t*). So in the case of *R. v. Borron* (*u*), which was an application for an information against a magistrate, and refused, *Abbott*, C. J., in delivering the judgment of the Court, said, “ they (the justices) are, indeed, like every subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But, whenever they have been challenged upon this head, either by way of indictment or application to this Court for a criminal information, the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right,—but from what motive it had pro-

(*t*) *R. v. Palmer*, 2 Burr. 1162 ; *Staffordsh.*, 1 Chit. 217 ; *R. v. JJ.* see also 1 T. R. 653, 692 ; 6 Mod. *Lancash.*, 1 D. & R. 485 ; 1 D. & R. 228 ; 2 Ld. Raym. 1407 ; 2 Str. Mag. Ca. 127 ; and *R. v. Constable*, 7 D. & R. 663 ; 3 D. & R. Mag. Ca. 678.

(*u*) 3 B. & Ald. 434 ; and see *R. v. Williamson*, *Id.* 582 ; *R. v. JJ.* 488.

ceeded; whether from a dishonest, oppressive, or corrupt motive, under which description fear and favour may generally be included, or from mistake or error. In the former case, alone, they have become the objects of punishment. To punish as a criminal any person, who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

In cases, however, where the public safety is at stake, a magistrate is punishable for gross neglect in the performance of his duties. Thus, where a justice is called upon to suppress a riot, he is required by law to do all he knows to be in his power, that can reasonably be expected from a man of honesty, and of ordinary prudence, firmness, and activity, under the circumstances. Mere purity of intention is, on such an occasion, no defence, if he fails in his duty. Nor is it a defence, that he acted upon the best professional advice that could be obtained on legal and military points, if his conduct has been faulty in point of law(*x*).

When moved  
for.

An information may be moved for in the second term after the cause of complaint, provided it be in sufficient

(*x*) *R. v. Pinney*, 3 B. & Ad. 947. But in suppressing a riot, he is not bound to head the special constables, or to arrange and marshal them; for this is the duty of the chief constable. Nor, if he calls upon soldiers to suppress a riot, is he bound to go with them in person; it is enough, if he gives them authority. Neither is a magistrate criminally answerable for not having called out special constables, and compelled them to act, pursuant to 1 & 2 Will. 4, c. 41; unless it be proved, that information was laid before him on oath of a riot having occurred or being expected. Nor is he chargeable with neglect of duty, for not having called out the *posse comitatus*,

in case of riot; if he has given the queen's subjects reasonable and timely warning to come to his assistance. And where a magistrate applied personally to some of the inhabitants of a city, called at the houses of others, employed other persons to do the same, sent notices to the churchwardens (on a Sunday) to be published at the places of worship, requiring the people to meet the magistrates at a stated time and place in aid of the civil power, and for the protection of the city, and posted and distributed other notices to the like effect; this was held to be reasonable warning, the riot having recently broken out.



time before the end to allow the magistrate to show cause that term (*y*).

But the Court of Queen's Bench will not entertain an application for a criminal information against a justice, unless six days' previous notice has been given to him of the intended motion; and if the notice name a day for the motion, which is less than six days distant, such defect is not aided by the party forbearing to move within six days (*z*). The magistrate is also entitled to this notice, although matters of a private nature may be mixed up with the complaint against him in his public character (*a*).

The Court will not hear a motion against a justice for convicting without a summons until the conviction is brought up by *certiorari* (*b*).

The costs of the motion for an information are entirely in the discretion of the Court. And, in some cases, although the Court refuse the rule, yet, if the conduct of the magistrate has been irregular, they will discharge it, without ordering the complainant to pay the magistrate his costs (*c*). And, in a case where a motion was made against a justice, the Court, in discharging the rule, ordered him to pay all the costs of the application (*d*).

Costs on motion.

It is an established rule, that the Court will not interfere, by information, against a magistrate for misconduct in convicting a party of an offence, unless the complainant accompanies the motion with an affidavit negating his being guilty of the offence. Thus, a rule *nisi* having been obtained, supported by affidavits of gross misconduct by a justice, in improperly convicting the complainant of killing a hare, under the former Game Laws,—the Court discharged it on the preliminary objection, that the

Exculpatory affidavit by complainant.

(*y*) *R. v. Marshall and another*, 13 East, 322; *R. v. Herries*, *Id.* 270.

(*z*) *Ex parte Fentiman*, 2 Ad. & E. 127.

(*a*) *R. v. Heming*, 5 B. & Ad. 666; 2 Nev. & M. 477.

(*b*) *R. v. Heber*, 2 Stra. 915; 2 Barn. 24.

(*c*) *R. v. Fielding*, 2 Burr. 720.

(*d*) *R. v. Hoseason*, 14 East, 606; see *R. v. Dodson and others*, 9 A. & E. 704.

complainant had not made any affidavit of his being a qualified person, and of his having taken out a certificate (*e*).

In some special cases, also, the Court will require the party making the application to relinquish his civil action for the same cause (*f*).

Defendant  
must appear to  
receive judgment.

After verdict upon the information, the defendant must appear in Court to receive judgment, unless some special reason be assigned by affidavit for dispensing with his appearance (*g*).

Nor is that sufficient, unless it be clear that the punishment will be only pecuniary: where that is the case, the personal attendance may be dispensed with (*h*).

(*e*) *R. v. Webster*, 3 T. R. 388.

(*f*) *R. v. Fielding*, 2 Burr. 720;  
as to the applicant having elected  
another remedy, see *R. v. Gwilt*, 11  
A. & E. 587.

(*g*) *R. v. Harwood*, 2 Str. 1088;  
see *R. v. Constable*, 7 D. & R. 663;  
3 D. & R. Mag. Ca. 488.

(*h*) *R. v. Hann and another*, 3  
Burr. 1786.

## CHAPTER II.

OF ACTIONS AGAINST CONSTABLES(*a*), ETC., FOR ACTS  
DONE IN EXECUTION OF CONVICTIONS.

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SECT. 1.—*Protection by Magistrate's Warrant.*

THE constable, or other officer, executing the warrant of the convicting justice is, by 21 Jac. 1, c. 12, s. 5, entitled to the same privilege as the justice, as to giving the special matter in evidence under the general issue(*b*), and as to the action being brought in the county where the fact was committed(*c*).

Also, by 24 Geo. 2, c. 44, s. 8, the *time* of bringing an action against the constable, as well as an action against the justice, is limited to six calendar months; the intention of the legislature being, that both the constable and the justice of the peace should be precisely in the same situation, with respect to the *time* in which such actions should be brought against them(*d*).

(*a*) See as to the appointment and payment of parish constables, and the naming of substitutes, 5 & 6 Vict. c. 109; *R. v. Booth*, 12 Q. B. 884; 10 & 11 Vict. c. 89; appointment of metropolitan police constable, *Allan v. Preece*, 10 Exch. Rep. 443; 24 L. J. (N. S.) Exch. 9. Penalties being directed to be paid to the police superannuation fund, see 13 & 14 Vict. c. 87, 28 Vict. c. 35; election of chief constable, *R. v. Watkinson*, 10 A. & E. 288; as to protection under 1 & 2 Vict. c. 74 (for the

recovery of small tenements), see *Jones v. Chapman*, 14 M. & W. 124; and *ante*, p. 464; as to the apprehension of offenders without warrant, see 24 & 25 Vict. c. 96, s. 103; and *ante*, p. 90.

(*b*) *Ante*, p. 477; see a special plea justifying under an order of sessions and warrant thereon, *Gay v. Matthews*, 32 L. J., M. C. 58.

(*c*) *Straight v. Gee*, 2 Star. 445; and see *ante*, p. 465.

(*d*) Per Holroyd, J., *Parton v. Williams*, 3 B. & Ald. 340; and see

May plead  
general issue.

Limitation of  
time.

Constables appointed under 2 & 3 Vict. c. 93.

By the statute 2 & 3 Vict. c. 93, county and district constables may be appointed by justices of the peace, and by the conjoint effect of sect. 8 and of sect. 19 of 1 & 2 Will. 4, c. 41, they are entitled to notice of action if sued for any thing done in pursuance of the act (e).

Protected by warrant.

Before the provisions made for the security and protection of inferior officers, by the act of 24 Geo. 2, c. 44, they were placed in the hazardous predicament of being liable to indictment, if they refused to execute the warrants of justices of the peace, and to vexatious actions if they did (f). It was the object of that act to relieve them from this difficulty, and to substitute the magistrate, —by whom the warrant was granted, and who was supposed to be cognizant of the legality of it,—in lieu of the officer, who was merely the instrument to execute it, and who was, probably, ignorant of the grounds on which it issued.

As the law stood before, the distinction was, that if the justice had no authority in the matter, so that the conviction was *coram non judice*, and void, his warrant afforded no protection to the officer; but if the justice had jurisdiction in the matter, the officer was protected, provided the manner of the execution was legal, however erroneous the judgment might have been, and though the magistrate himself might be liable (g).

*Smith v. Wiltshire*, 2 Brod. & B. 619; 5 B. Moore, 322; *Hendry v. Biers*, 2 D. & R. 9. These statutes of James I and Geo. 2 are repealed by 11 & 12 Vict. c. 44, s. 17, only so far as they relate to actions against justices. By s. 18 of 11 & 12 Vict. c. 44, it is enacted that that statute (11 & 12 Vict.) shall apply for the protection of all persons for anything done in the execution of their office in all cases in which, by the provision of any act or acts of parliament, the several statutes or parts of statutes hereinbefore mentioned, and by this act repealed (viz.: 7 Jac. 1, c. 5; 21 Jac. 1, c. 12, s. 5; 24 Geo. 2,

c. 44, ss. 1, 2 and part of s. 8, and 43 Geo. 3, c. 141) would have been applicable if this act had not been passed; and see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71.

(e) But they are not entitled to notice of action in an action of replevin; *Gay v. Matthews*, 32 L. J., M. C. 58.

(f) See the observations of Mr. J. Lawrence, 5 East, 448; *Jones v. Vaughan*.

(g) *Terry v. Huntingdon*, Hard. 484; 1 Bac. Abr. tit. *Constable*, D.; *Hill v. Bateman*, 1 Str. 710; *Howard v. Gosset*, 10 Q. B. 387; *Watson v. Bodell*, 14 M. & W. 57; *Atkins v.*

But now, by the statute 24 Geo. 2, c. 44, s. 6, "no action shall be brought against any constable, headborough, or other officer, or against any person acting by his order, or in his aid, for any thing done in obedience to any warrant, under the hand and seal of any justice, until demand has been made or left at the usual place of his abode, by the party intending to bring such action, or by his attorney (*h*) or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand. Demand of warrant.

"And in case, after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, &c., or against such person acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants (*i*); on producing or proving such warrant on the trial of such action, the jury shall give their verdict for the defendant or defendants, *notwithstanding any defect of jurisdiction in such justice or justices* (*k*).

"And, if such action be brought jointly against such justice or justices, and also against such constable, &c.: then, on proof of such warrant, the jury shall find for such

*Kilby*, 11 A. & E. 777; *Morrell v. Martin*, 3 M. & G. 591; *Keane v. Reynolds*, 2 El. & Bl. 748; and see *Reg. v. Davis*, 30 L. J., M. C. 159. They were not liable where there was a general jurisdiction over the subject-matter; *Thomas v. Hudson*, 14 M. & W. 353; 16 *Id.* 884; *West v. Smallwood*, 3 *Id.* 420, unless a want of jurisdiction in the specific case appeared on the face of the warrant; *Howard v. Gosset*, *supra*; see *Caudle v. Seymour*, 1 Q. B. 889.

(*h*) If the demand be signed by the plaintiff's attorney, and left by his clerk, it is sufficient; *Clark v.*

*Woods and others*, 2 Exch. 395.

(*i*) Where a person was wrongfully assessed and distrained upon for land-tax, it was held that he was not bound to join as defendants with the constable the commissioners who issued the warrant, the above section being inapplicable, although they were also magistrates for the division in which the warrant issued; *Charleton v. Alway*, 11 A. & E. 993.

(*k*) Though the warrant is granted without jurisdiction, the constable is entitled to protection under this section; *Atkins v. Kilby*, 11 A. & E. 777.

constable, notwithstanding such defect of jurisdiction as aforesaid" (l).

Sufficient if  
furnished be-  
fore action.

In the construction of this act it is held, that, although the plaintiff is restrained from bringing the action till after a neglect of six days to furnish a copy of the warrant, yet the defendant, the constable, is entitled to the benefit of the act, if, at any time *before* the action commenced, a copy of the warrant be furnished, though not till after six days from its being demanded (m). The mere fact, however, of the plaintiff's having obtained a copy of the warrant by other means, does not excuse the constable from complying with the demand (n).

But, although the officer is bound to show the warrant to, and permit a copy of it to be taken by, the party demanding the same, he is in no case required to part with the warrant out of his own possession; for that is his justification (o).

If the plaintiff's attorney, previous to bringing the action, make out two papers precisely similar, purporting to demand a copy of the warrant, pursuant to the statute, and sign both for his client, and then deliver one to the defendant, the other will be evidence at the trial to prove the demand (p).

To what kind  
of actions the  
statute applies.

The act is confined to actions of tort brought for the recovery of damages, and therefore it was held not to extend to an action of replevin, which is a proceeding *in rem* (q), nor to an action for money had and re-

(l) See *Eggington v. The Mayor, &c., of Lichfield*, 1 Jur., N. S. 908, 911; 24 L. J., Q. B. 360. The mere fact of the justices being joined does not entitle the constable to a verdict unless he has complied with the demand of the perusal and copy of the warrant; *Clark v. Woods and others*, 2 Exch. 395.

(m) *Jones v. Vaughan*, 5 East, 448.

(n) *Clark v. Woods and others*, 2 Exch. 395.

(o) 1 East, P. C. 319; *Atkins v.*

*Kilby*, 11 A. & E. 777.

(p) *Jory v. Orchard*, 2 B. & P. 39.

(q) *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58; *Fletcher v. Wilkins*, 6 East, 283; *Le Feuvre v. Miller*, 26 L. J., M. C. 175. In the last cited case, it was held that non-publication of a rate (made under the Public Health Act) did not make the rate void, and that on a summons to enforce the rate, which had not been published but also had not been appealed against, the justices were right in

ceived brought against an officer who had levied and sold a distress under a conviction, which was afterwards quashed (*r*).

The act extends also to those cases only in which a warrant has been actually granted (*s*). But where there has been a warrant, in the execution of which the act complained of was done, it is a justification to the officers; and whether the warrant itself be legal or not, a demand of it is necessary under 24 Geo. 2, c. 44. Since that act, the jurisdiction of the magistrates cannot be tried in an action against the officers alone (*t*).

2. The condition of being entitled to the benefit of the statute is, that the officer, in what he did, was acting in obedience to the warrant (*u*); the object of the statute, as has been before observed (*x*), being to protect inferior ministers in those acts which their office obliged them to execute, at the risk of being answerable for the magistrate's want of authority, it follows, that the privilege attaches to no act but what is expressly within the exigency of the warrant. For this reason, it has been said, that wherever the magistrate could not be liable, the act does not apply (*y*).

What acts protected by the statute.

It was ruled by Lord *Mansfield*, in the case of an officer executing a warrant under the Vagrant Act, that the officer was bound to show, not only the warrant, but also that he had acted in obedience to it (*z*). The same point had before been ruled by his lordship in another case tried before him (*a*). And, in the celebrated question upon the execution of general warrants, which was agitated in the case of *Money v. Leach* (*b*), it was insisted, besides the

disregarding the non-publication, and that their warrant was a protection to the officer distraining under it.

(*r*) *Feltham v. Terry*, Bull. N. P. 24; see *Irving v. Wilson*, 4 T. R. 485; *Wallace v. Smith*, 5 East, 122; *Harper v. Carr*, 7 T. R. 270.

(*s*) 3 Esp. Cas. 226.

(*t*) *Price v. Messenger*, 2 B. & P.

158; 3 Esp. Cas. 96. See the observations of Eyre, C. J., 2 Wils. 291, and 4 Bl. Com. 291.

(*u*) 2 Burr. 1766.

(*x*) *Ante*, p. 488.

(*y*) Bull. N. P. 24.

(*z*) *Dawson v. Clark*, cited 3 Burr. 1767.

(*a*) *Id*.

(*b*) 3 Burr. 1742, 1767.

illegality of the warrants themselves, that the officers were not protected, because they had not acted in obedience and conformably to the exigency of the warrants. The cases and doctrine above mentioned being appealed to in confirmation of that argument, the Attorney-General, *Yorke*, gave up the case of the defendant upon that point, and admitted that the objection was a difficulty too great for him to encounter (c). Lord *Mansfield*, upon that occasion, confirmed his former direction, and added, that, where the justice cannot be liable, the officer is not within the protection of the statute (c).

For this reason, if the constable execute a warrant of seizure out of the magistrate's jurisdiction, he is not indemnified by the act: thus—

A warrant was granted by a justice of the county of *Kent*, directed to the constables of the lower half-hundred of *Chatham and Gillingham*, in the said county, and to the borsholders there. The defendants, who were borsholders of the district mentioned, having executed the warrant in a certain part of the parish of *Gillingham, in the manor of Grange*, lying within the liberties of the *Cinque Ports* (which for this purpose is a separate jurisdiction (d)), were held to be liable to an action of trespass, without joining the magistrate (e). But it was at the same time declared, that if the magistrate had directed the constable to execute his warrant within the manor of *Grange*, no doubt the constable would have been protected, though it had turned out that the manor of *Grange* was not within his jurisdiction (f). But the warrant being directed merely “to the constables of the *lower half-hundred of C. and G., in the county of Kent*,”—if the officer took a dis-

(c) 3 Burr. 1767, 1768.

(d) By 18 & 19 Vict. c. 49, the separate jurisdiction of the Cinque Ports is abolished as regards *civil proceedings*, and provision is also made for bringing them within the jurisdiction of the county justices in

other proceedings, if on petition for that purpose her Majesty should so order. See sects. 1, 3, 5, 10.

(e) *Milton v. Green*, 5 East, 233.

(f) 5 East, 237, per Lord Ellenborough.



tress in that part of the lower half-hundred of *C. and G.*, which did not lie within the *county of Kent*, but in another jurisdiction, the warrant could no more justify going there to execute it, than if they had gone into the county of Suffolk (*g*).

And for the same reason, if the constable exceeds the authority given him by the warrant, he is not within the protection of the statute; as where certain officers, in order to levy a poor's rate under a warrant of distress granted by two magistrates, broke and entered the house, and broke the windows, &c.; it was held, that they might be sued in trespass, without a previous demand of the perusal and copy of the warrant according to the statute(*h*); for the justice in this case could not be liable for the excess of authority committed by the officers.

A greater latitude of construction, however, has been held to apply, in favour of the officer, to acts of parliament which impose restrictions on actions against officers, "for any thing done *in pursuance of the act*." Thus, where a constable, having a magistrate's warrant of distress to levy a church-rate, under the statute 53 Geo. 3, c. 127,—the 12th section of which requires any action "brought for any thing done *in pursuance of that act*" to be commenced within three calendar months after the fact committed,—broke open the outer door of the plaintiff's house, which it was admitted he was not justified in doing by the war-

(*g*) *Ib.* 236, note. Lord Kenyon, in an action of assault and imprisonment against a defendant, who justified as a constable, is said to have overruled an objection to the action not being brought within six months, according to 24 Geo. 2, c. 44, s. 8, on this distinction, viz. "that the defendant acted *colore officii* and not *virtute officii*;" he said, "that a constable acting *colore officii* was not protected by the statute; where the act committed is of such a nature, that the office gives him no authority to do it, in the doing of that act he is not to be considered as an officer."

This is agreeable to the construction of the act laid down in the text; but some mistake may be suspected in the subsequent expression attributed to his lordship, viz. "that where a man, doing an act within the limits of his official authority, exercises that authority improperly, or abuses the discretion placed in him, to such cases the statute extends;" *Alcock v. Andrews*, 2 Esp. Cas. 541. This position at least requires a further explanation to render it consistent with the doctrines elsewhere delivered.

(*h*) *Bell v. Oakley*, 2 M. & S. 259.

rant: it was held, that, although he thereby exceeded his authority, yet he was within the protection of the 12th section of that statute: the object of which was, as laid down by Lord *Ellenborough*, to protect persons acting illegally, but in supposed pursuance of the statute, and with a *bonâ fide* intention of discharging their duty under the act of parliament; for if it meant only acts lawfully done under the authority of the statute, the constable would not in that case need to be protected(*i*).

And, although an officer, in order to entitle himself to the protection of the *sixth* section of the 24 Geo. 2, c. 44, must act strictly in obedience to the warrant of the magistrate,—for the act done is then identified with that of the justice, who becomes alone responsible for it,—yet if a constable acting *bonâ fide*, and with an honest opinion that he is discharging his duty, should even exceed his authority, he still does not lose the protection given both to justices and constables by the *eighth* section of the statute, which provides, that no action shall be brought against either of them for any thing done in the execution of their respective offices, unless commenced within six calendar months after the act committed. For this last provision has a very different object in view from that of the *sixth* section, being evidently intended for the benefit of persons who intend to act right, but by mistake act wrong. Therefore, where a constable, acting under a warrant commanding him to take the goods of A., took the goods of B., believing them *bonâ fide* to belong to A.: it was held, that the action against him for this wrongful seizure must be brought within six calendar months(*k*).

(*i*) *Theobald v. Chrichmore*, 1 B. & Ald. 227; *Eggington v. The Mayor, &c. of Lichfield*, 5 El. & Bl. 100; 1 Jur. (N.S.) 908, 911; 24 L. J., Q. B. 260, S. C.; *Gosden v. Elphick and another*, 4 Exch. 445. In the latter case it was held that if he acted *bonâ fide*, believing that he was doing his duty, though mistaken, he was within the protection of the statute, and

that the question was not whether the circumstances were such as might reasonably lead him to think he was so acting. See also *Bal-linger v. Ferris*, 1 M. & W. 628; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; and *ante*, p. 457, n. (*e*).

(*k*) *Parton v. Williams*, 3 B. & Ald. 330.

Where magistrates, after examining an overseer's accounts, had found a balance due from him to the parish, and after the lapse of fourteen days had signed a distress warrant; but before it was executed, upon a suggestion of a mistake in the amount adjudged, they ordered the execution of the warrant in the hands of the officers to be suspended, notwithstanding which the officers afterwards executed it, and no previous demand had been made of a copy of the warrant: it was held, that, the adjudication and warrant being legal, the justices could not order the warrant to be suspended, on the mere ground of doubts being entertained whether the accounts were well settled,—and that the officers were therefore justified in acting under it, and entitled to have the demand of the copy and perusal of the warrant made before the action brought. But it would appear, that if the warrant had been a nullity, and the officers had previous notice thereof, they would not then have been entitled to the protection of the statute(*l*).

3. A warrant directed to constables generally, by their name of office only, was formerly understood as an authority to each in his own district only(*m*). And, therefore, a constable, acting under such general direction, was held not to be protected by the warrant in any act done out of the limits of his own division(*n*); though if the warrant was directed to a constable by name, and not merely by his office, it *might* legally be executed by him at any place within the jurisdiction of the magistrate(*o*). But this distinction now no longer holds; for, as we have seen, by 11 & 12 Vict. c. 43, constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same(*p*).

Who protected  
by the warrant.

(*l*) *Barrons v. Luscombe*, 5 Nev. & M. 330.

(*m*) *R. v. Chandler*, 1 Ld. Raym. 545; see *Mellor v. Leather*, 1 El. & Bl. 619; *Freegard v. Barnes*, 7 Exch. 827; 1 & 2 Vict. c. 74; *Jones v. Chapman*, 14 M. & W. 124; 2 D. & L. 907, S. C.; see *ante*, pp. 302, 335.

(*n*) *Blatcher v. Kemp*, 1 H. Bl. 15, n.

(*o*) 1 Ld. Raym. 545; 1 H. Bl. 15, n.; *R. v. Weir*, 1 B. & C. 288; 2 D. & R. 444; 1 D. & R. Mag. Ca. 319.

(*p*) *Ante*, p. 24.

Upon the construction of an act containing a similar provision (5 Geo. 4, c. 18, s. 6) (*q*), a question has arisen, whether it is *obligatory* on a constable of a parish, to whom a warrant is addressed by his name of office, to go out of his own precinct for the purpose of executing it, where the place in which it is to be executed is within the jurisdiction of the justices by whom it is granted; and the Court of *Exchequer* was clearly of opinion, that the operation of the act was not obligatory, but gave the constable an option, whether he would or would not go out of his own precinct. The question arose in an action of trespass, brought by the plaintiff, who had been a headborough, against two justices, who had convicted him on the statute 33 Geo. 3, c. 55, s. 1, for neglecting and refusing to execute a warrant directed to him by a magistrate, for the apprehension of a person charged with an assault. The warrant was addressed, "To the constable of C., and all other peace-officers of the said county." It was delivered to the plaintiff, but he refused to execute it upon the party, who resided seven miles from the parish of which he was headborough; and, being summarily convicted in a penalty, and discharged from his office for such refusal, he brought his action against the magistrates, the penalty having been enforced by distress and sale of his effects. It was contended on the part of the defendants, that, by the operation of the statute above mentioned, the plaintiff was *bound* to obey the warrant, and execute it *out of his own parish*, and therefore the conviction and distress were legal. After argument, the Court took time to deliberate, and, in delivering judgment on this among other points arising in the case, *Alexander, C. B.*, said, "On the second point, that the constable was obliged to go out of his district, we think, upon the authority of the case of *The Village of Chorley* (*r*), and the other cases which were cited for that

(*q*) Repealed by 11 & 12 Vict. c. 43, s. 36.      (*r*) 1 Salk. 175.

purpose(s), and the *dicta* of very eminent lawyers, that, previously to the recent statute, a constable, though named in the warrant, was not *bound* to execute it out of his precincts. We concur the more readily in this opinion, that the other rule would impose an intolerable burden upon those officers. We are further of opinion, that the act of 5 Geo. 4, c. 18, s. 6, imposes no such obligation. It meant no more, than to *authorize those officers to execute warrants out of their precincts,—and to put warrants, addressed to them only by the description of their official character, on the same footing as warrants addressed to them by name.* The mischief recited in the preamble of the clause, and the operative words of the enactment, both clearly indicate that intention, and that only” (t).

By 21 Jac. 1, c. 12, s. 52, the action against a constable or other officer sued for any thing done by virtue of his office must be laid within the county where the trespass or fact is done and committed, and not elsewhere. In a case arising on the former Malicious Trespass Act, 1 Geo. 4, c. 56, two constables were sued in *Middlesex* for an act done in *Surrey*, and upon the fact so appearing, *Abbott, C. J.*, immediately directed a verdict for the defendants (u).

And in another case, where an action was brought against a constable in *London*,—for apprehending a person on a charge of forgery in *Middlesex*, without a warrant, and with very slight cause of suspicion,—it was held by the same learned judge, that the defendant was entitled to an acquittal; for although he had not been called upon to act, still he might have thought it his duty to act, in the capacity of constable; and that by the words in the statute, “by virtue of his office,” was meant, that he was acting under colour of his office, intending to act in the character of constable (x).

(s) The cases cited in the text & Younge, 469.

*supra.* (u) *Bond v. Rust, Middlesex Sit-*

(t) *Gimbert v. Coyney and another,* *tings, 1st November, 1826.*

3 D. & R. Mag. Cas. 323; 1 M'Clel. (x) *Straight v. Gee, 2 Star. 445.*

By the same statute, all persons who act in the aid and assistance, or by the command of the constable, are equally entitled to the same protection in any action that may be brought against them ; and whether they act merely in aid of the constable, or as prime movers in the transaction, is a proper question for the consideration of the jury (y).

Evidence.

Upon an issue of *non cepit* in replevin, it was held that the defendant under 5 & 6 Will. 4, c. 76, ss. 76, 133, might show that he was appointed a constable for a borough, and took the goods within the county, wherein the borough was situate, but without the borough, on a charge that they were stolen (z).

(y) *Straight v. Gee*, 2 Star. 445.      1 El. & Bl. 619; *ante*, pp. 30—33.  
 (z) *Mellor v. Leather and another*,

## CHAPTER III.

## EFFECT OF CONVICTION IN COLLATERAL PROCEEDINGS.

A CONVICTION or order has sometimes, by reason of statutory provisions, the effect of divesting possession in goods from one and vesting it in another.

Thus a fire having occurred in warehouses near the Thames, and melted tallow having flowed from them down the sewers into the river, it was collected by a person, who sold it to the plaintiff. While he was carrying it away he was stopped, and taken before a metropolitan police magistrate, who discharged him, but ordered the tallow to be detained by the police (under sect. 29 of 2 & 3 Vict. c. 71). In consequence of the tallow becoming offensive, it was sold to the defendants by direction of the Commissioners of Police before the time limited for that purpose, and in an action to recover it, it was held, that the plaintiff had no property in the tallow, and that his possession had been lawfully divested by the order of the magistrate, and, therefore, that he could not maintain the action (*a*). The effect of a conviction or order with respect to its conclusiveness as to the facts found in it has been already considered (*b*). It is in general a bar to other proceedings for the same cause (*c*). Previous summary convictions

Divesting possession.

Conclusiveness of facts stated in,

*Res judicata*.

Effect on punishment for

(*a*) *Buckley v. Gross and another*, 3 B. & S. 566; 32 L. J., Q. B. 129; see ss. 29 and 30 of the above statute.

(*b*) *Ante*, pp. 145, 397, 431, 455, n. (*x*).

(*c*) 24 & 25 Vict. c. 96, ss. 107, 109, and c. 97, s. 67, and *ante*, p. 145. By s. 109 of 24 & 25 Vict. c. 96, it is enacted, that any person convicted of an offence punishable on summary conviction by virtue of that act having

paid the sum adjudged with costs, or having received a remission thereof from the crown, or having suffered the imprisonment awarded for nonpayment thereof, or the imprisonment adjudged in the first instance, or having been discharged from his conviction by any justice (as in sect. 108), shall be released from all further or other proceedings for the same cause.

subsequent of-  
fences.

materially affect the measure of punishment awarded to the same person subsequently convicted, either summarily or upon indictment (*d*).

Conviction not  
evidence in  
civil proceed-  
ings of the  
guilt of person  
convicted.

How far a regular conviction unappealed from is evidence in an action for any thing done *under* it has been treated of already in considering the proceedings against magistrates and officers(*e*). With regard to its effect in any collateral proceedings, it has been laid down, that the person, upon whose evidence another has been convicted, cannot make use of the conviction in a civil proceeding between him and the same person, as evidence of that person's being guilty of the offence, though it may be admissible in mitigation of damages. Thus, on the trial of an action of assault and false imprisonment, on a plea of not guilty, the justification set up by the defendant was under a local act, 12 Geo. 3, c. 69, for paving and lighting, by which "any person offending against that act, by driving a wheelbarrow, &c. upon the foot-pavement, may be apprehended by any person whatsoever, and conveyed before a justice of the peace, who is required to examine the matter, and impose a penalty on conviction." The act is declared to be public; and any person sued for any thing done by its authority is empowered to plead the general issue, and give the special matter in evidence. To prove the fact of the plaintiff having been guilty of the offence above described, the defendant offered in evidence the record of a conviction before a justice. But, the justice's clerk proving that the conviction was founded on the evidence of the defendant himself, though his name did not appear upon the face of it, Lord *Ellenborough* refused to receive it as an adjudication of the plaintiff's guilt; because, by the admission of it for that purpose, the defendant would be allowed to swear in his own cause. But his lordship admitted it to be read, to show that the defendant was acting in the course of his duty, and not

(*d*) See for instance 24 & 25 Vict. c. 96, s. 9; and as to stating such convictions in an indictment, *Id.*

s. 116, and *Cureton v. The Queen*, 33 L. J., M. C. 149.

(*e*) *Ante*, p. 455, and *id.* n. (*x*).



from malice to the plaintiff(f). With reference to the reason given by his lordship for rejecting the conviction, it has been observed by Mr. Baron *Parke*, when delivering judgment in *Blakemore v. The Glamorganshire Canal Company*(g), "There are dicta of very learned judges at *Nisi Prius* in cases in which, when they are properly rejecting records which were inadmissible on the principle of *res inter alios acta*, they assign one reason, which exists in the particular case, instead of relying on the general rule. These are the dicta of Lord *Ellenborough* in *Smith v. Rummens*, and Lord Chief Justice *Mansfield* in *Hathaway v. Barrow* (1 Camp. 151). There are also to be found cases in which the Courts, exercising their equitable jurisdiction, have refused to permit parties to avail themselves, on motions, of convictions of perjury, obtained by their own evidence, and that on account of the inconvenience which it would occasion if a practice of this kind were allowed. Such are the cases of *Burdon v. Browning* (1 Taunt. 522), *Bartlett v. Pickersgill* (4 East, 577, n. (b)), contrary to what is said in *Rex v. Eden* (1 Esp. 97)."

Upon another occasion, a record of conviction for having smuggled spirits, in which was set out the deposition of a witness, was refused, as evidence to contradict the same witness, upon the trial of an information for assaulting revenue officers in making the seizure, and to prove that, contrary to his assertion, he had given a different account before the magistrates. Lord *Ellenborough* said, "he should admit the record to prove the purpose for which by law it is effectual, but not to contradict the witnesses. For that purpose, he should require the evidence on oath of persons present before the magistrates, who had heard all that was sworn" (h).

(f) *Smith v. Rummens*, 1 Camp. 9. The reason given by Lord *Ellenborough* for refusing to receive the conviction as an adjudication of the plaintiff's guilt is no longer applicable, as a defendant may now (with very few exceptions) be a witness in

his own cause, *ante*, p. 107.

(g) 2 C. M. & R. 133, 139.

(h) *R. v. Howe*, 1 Camp. 461. See *Starkie's Law of Evidence*, vol. 2, pp. 414, 792, *et seq.*, and 810, *et seq.* As to contradiction of witnesses, see 17 & 18 Vict. c. 125, ss. 22, 23, 24;

Conviction,  
when an estop-  
pel.

A conviction, however, before a competent tribunal, and unreversed, will operate as an estoppel in a criminal proceeding upon the points decided by it. Therefore, where on an indictment for non-repair of a highway against the inhabitants of the township of H., averring that the highway was in the township, the prosecutors gave in evidence a record of a presentment by a justice under 13 Geo. 3, c. 78, on his own view, that the road in question was out of repair, averring that it was in the township of H., and that the inhabitants of that township ought to repair it, and the record showed a plea of guilty by two inhabitants of the township of H., a conviction before the sessions, and a sentence of fine: it was held conclusive evidence against H. that the road was in that township, and this, although the presentment might have been bad on error for not showing how the township was liable (*i*).

Convictions,  
how proved.

A conviction in general is proved by a certified copy (*k*), and it is expressly enacted by the Criminal Law Consolidation Acts, that convictions under their provisions may be so proved, and shall be presumed to have been unappealed against until the contrary is shown (*l*).

and 28 Vict. c. 18; *ante*, p. 367, n. (*n*).

(*i*) *R. v. JJ. Haughton*, 1 El. & Bl. 501; see *Keane v. Reynolds*, 2 Id. 748; *R. v. JJ. Bristol*, 22 L. T. 213; *Justice v. Gosling*, 21 L. J., C. P. 94; and 2 Smith's L. C. 444.

(*k*) See *R. v. Yeoveley*, 8 A. & E. 806; *R. v. Ward*, 6 C. & P. 366.

(*l*) 24 & 25 Vict. c. 96, ss. 112, 116, and c. 97, s. 70. The stat. 5 Geo. 4, c. 83, s. 17, requires convictions under that act to be filed in the court of quarter sessions, and

makes copies of such convictions, signed by the clerk of the peace, evidence of the same. At petty sessions it was attempted to prove a previous conviction under that act, by the oath of a policeman that the defendant had been convicted on a previous occasion, and the production of the minute-book of the clerk of the court containing an entry of such conviction. It was held that the evidence was insufficient; *Giles v. Siney*, 13 W. R. 92 (Q. B.) Nov. 14, 1864.

## APPENDIX.

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## I. STATUTES.

NOTE.—The pages mentioned in the margin refer to the pages in the former part of the work, where the section against which they are placed is cited or commented upon.

## 11 &amp; 12 VICT. c. 43 (a).

*An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders.*  
[14th August, 1848.]

WHEREAS it would conduce much to the improvement of the administration of justice within England and Wales, so far as respects summary convictions and orders, to be made by her Majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: Be it therefore declared and enacted

Pages 64, 81.

(a) See general observations upon this statute, *ante*, p. 58 *et seq.*

In all cases where information shall be laid or complaint made of offences committed, justices may issue summons to persons to answer the same.

How summons to be served.

Justices not obliged to issue summonses in certain cases.

No objection allowed for want of form.

If summons be not obeyed, justices may issue warrant ;  
Pages 90, 96.

&c., that in all cases where an information shall be laid before one or more of her Majesty's justices of the peace for any county, riding, division, liberty, city, borough or place, within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A.) directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place, as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law ; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode ; and the constable, peace officer or person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons : Provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte* : Provided also, that no objection shall be taken or allowed to any information, complaint or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned ; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

II. And be it enacted, that if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what

shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B.) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or information being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C.) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information, and to be further dealt with according to law; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

or may issue  
warrant in the  
first instance ;

or if summons,  
having been  
duly served,  
be not obeyed,  
the justices  
may proceed  
*ex parte*.

III. And be it enacted, that every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district, and it shall state shortly the matter of the information or complaint on which

Form of war-  
rant.

Pages 93, 94,  
95.

Where and how  
warrant may be  
executed.

Certain provi-  
sions of 11 &  
12 Vict. c. 42,  
as to backing  
of warrants to  
extend to war-  
rants issued  
under this act.

No objection  
allowed for  
want of form in

it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, borough or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet or place, situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder or other peace officer; and such of the provisions and enactments contained in a certain act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences," (b) as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this act, shall extend to all such warrants, and to all warrants of commitment issued under and by virtue of this act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this act: Provided always, that no objection shall be taken or allowed to any such warrant to

(b) 11 & 12 Vict. c. 42, ss. 11—15; *ante*, p. 24.

apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place, within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant.

IV. And be it enacted, that in any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be, and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained or repaired at the expense of any county, riding, division, liberty, city, borough or place, or of any materials for the making, altering or repairing of the same, they may be therein described as the property of the inhabitants of such county, riding, division, liberty, city, borough or place

the warrant, or for any variance between it and evidence adduced; but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance;

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

Description of the property of partners, &c.; Pages 68, 187.

of the property of counties;

of the property in goods provided for the poor ;

of the property in materials for parish roads ;

of the property in materials for turnpike roads, &c. ;

of the property of commissioners of sewers.

Prosecution and punishment of aiders and abettors in the commission of offences.

Page 72.

\* *Sic.*

Provisions of 11 & 12 Vict. c. 42, as to justices in one county, &c. acting for another to extend to this act.

respectively ; and all goods provided by parish officers for the use of the poor may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them ; and all materials and tools provided for the repair of highways at the expense of parishes or other districts in which such highways may be situate may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them ; and all materials or tools provided for making or repairing any turnpike road, and buildings, gates, lamps, boards, stones, posts, fences or other things, erected or provided for the purpose of any such turnpike road, may be described as the property of the commissioners or trustees of such turnpike road, without naming them ; and all property of the commissioners of sewers of any district may be described as the property of such commissioners, without naming them.

V. And be it enacted, that every person who shall aid, abet, counsel or procure the commission of any offence, which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable,\* and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

VI. And be it enacted, that such of the provisions and enactments in the act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Persons charged with indictable Offences," (c) whereby a justice of the peace for one county, riding, division, liberty, city, borough or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division or liberty may act as such within any city, town or precinct, next adjoining thereto or surrounded thereby, being a county of itself, or otherwise having exclusive jurisdiction, as are applicable to the provisions of this act, shall be deemed to be incorporated into this act, and to



extend to all acts required of or to be performed by justices of the peace under or by virtue of this act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this act (d).

VII. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons (G. 1.) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs or expenses in that behalf,) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (G. 2.) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (G. 3.) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said

Power to justice to summon witnesses to attend and give evidence; Page 104.

if summons be not obeyed, justices may issue warrant;

in certain cases may issue warrant in the first instance.

Persons appearing on summons, &c. refusing to be examined, may be committed.

(d) This section is not controlled by sect. 35, of this act, see 26 & 27 Vict. c. 77.

warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (G. 4.) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

Complaints for an order need not be in writing.

Page 74.

As to proceedings upon informations for offences punishable on summary convictions.

Pages 76, 77.

The party charged, if deceived by variance between information and evidence, may be committed or discharged upon recognizance ;

but if he fail to re-appear, the justice may

VIII. And be it enacted, that in all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament upon which such complaint shall be framed.

IX. And be it declared and enacted, that in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same ; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined ; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned : Provided always, that in all cases where a defendant shall be discharged upon recognizance

as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place, within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant.

transmit the recognizance to the clerk of the peace.

X. And be it declared and enacted, that every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf.

Manner of making complaint or laying information.

Page 64.

When warrant issued in the first instance, information to be upon oath, &c.

Information to be for one offence only.

XI. And be it enacted, that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Time limited for such complaint or information.

Page 68.

XII. And be it enacted, that every such complaint and information shall be heard, tried, determined and adjudged by one or two or more justice or justices of the peace, as shall be directed by the act of parliament upon which such complaint or information shall be framed, or such other act or acts of parliament as there may be in that behalf; and if there be no such direction in any such act of parliament, then such complaint or information may be heard, tried, determined and adjudged, by any one justice of the peace for the county, riding, division,

As to the hearing of complaints and informations.

Page 97.

Places in which justices shall sit to hear complaints, &c. to be deemed an open court.

Parties allowed to plead by counsel or attorney.

If defendant does not appear, justices may proceed to hear and determine, or issue warrant, and adjourn the hearing till defendant is apprehended.

Page 89.

If defendant appear, and complainant, &c. does not, justice may dismiss the complaint, &c. or at discretion adjourn hear-

liberty, city, borough or place where the matter of such information shall have arisen; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

XIII. And be it enacted, that if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the nonappearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough or place, who shall thereupon, either by his or their warrant (H.), commit such defendant to the house of correction or other prison, lock-up house or place of security, or, if he or they think fit, verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn

the hearing of the same unto some other day upon such terms as he or they shall think fit, in which case such justice or justices may commit (D.) the defendant in the meantime to the house of correction or other prison, lock-up house or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place within which the offence shall be laid to have been committed; to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attornies, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

XIV. And be it enacted, that where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon

ing and commit or discharge defendant upon recognizance;

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

If both parties appear, justice to hear and determine the case.

Proceedings on the hearing of complaints and informations.

Pages 98, 154, 228—248, 288.

the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say, as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made (a), for which no fee shall be paid, and the conviction (L. 1—3) or order (K. 1—3) shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (L.), and shall give the defendant in that behalf a certificate thereof (M.), which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: Provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the statutes on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

Proviso.

Prosecutors  
and complain-  
ants in certain  
cases to be  
deemed compe-  
tent witnesses,  
and examined  
upon oath, &c.  
Page 107.

Power to jus-  
tices to adjourn  
the hearing of  
cases, and  
commit defend-  
ant, or suffer  
him to go at  
large, or dis-  
charge him

XV. And be it enacted, that every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

XVI. And be it enacted, that before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the meantime the said justice or justices may suffer the de-

defendant to go at large, or may commit (D.) him to the common gaol or house of correction or other prison, lock-up house or place of security in the county, riding, division, liberty, city, borough or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit: Provided always, that in all cases where a defendant shall be discharged on recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the nonappearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant.

upon his own  
recognizance;  
Pages 98, 99.

but if he fail  
to re-appear,  
the justice may  
transmit the  
recognizance to  
the clerk of the  
peace.

XVII. And be it enacted, that in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1—3) in the schedule to this act contained as shall be applicable to such case, or to the like effect; and where an order shall be made, and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by

Form of con-  
victions and  
orders(f).  
Pages 59, 165,  
202, 298.

(f) The schedule of forms will be found, *post*, "Forms."

whom such order is to be made to draw up the same in such one of the forms of orders (K. 1—3) in the schedule to this act contained as may be applicable to such case, or to the like effect; and in all cases where by any act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order (g) before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Power to justice to award costs, which shall be specified in conviction or order of dismissal, and may be recovered by distress.

Page 283.

XVIII. And be it enacted, that in all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

Power to justice to issue warrant of distress.

Pages 297, 304, 305.

XIX. And be it enacted, that where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order such penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division,



liberty, city, borough or place, to issue his or their warrant of distress (N. 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement (N. 3) on such warrant, signed with his hand, authorizing the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place: Provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant or distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such warrant of distress had issued and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

XX. And be it enacted, that in all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough or place as may then be there: Provided always, that in all cases where a defendant shall give

How warrant to be backed.

Where the issuing a warrant would be ruinous to defendant, or where there are no goods, justice may commit him to prison.

Justice, after issuing warrant, may suffer defendant to go at large, or order him into custody, until return be made unless he gives security by recognizance; Page 305.

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

In default of sufficiency of distress, justice may commit defendant to prison.

Page 305.

In all cases of penalties, convictions or orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

Pages 305, 316.

security by recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant.

XXI. And be it enacted, that if at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return (N. 4) that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXII. And whereas by some acts of parliament justices of the peace are authorized to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; be it therefore enacted, that in all such cases, and in cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have

been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

XXIII. And be it enacted, that in all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour, for a certain time, unless such penalty, compensation or sum shall be sooner paid, in every such case such penalty, compensation or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith, or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of commitment (O. 1, 2) under his or their hand and seal, or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough or place aforesaid, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

XXIV. And be it enacted, that where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the

Power to justices to order commitment in the first instance for non-payment of a penalty or of a sum ordered to be paid.

Page 315.

Power to justices to order commitment where the conviction is not for a penalty, nor the order for payment of

money, and the punishment is by imprisonment, &c.

Pages 284, 316, 334.

Costs may be levied by distress, and in default defendant may be committed for a further term.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

Pages 283, 337.

If information be dismissed, costs may be recovered by distress upon prosecutor, &c. who in default may be committed.

defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of commitment (P. 1, 2) under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress (P. 3, 4) in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed (P. 5) to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

XXV. And be it enacted, that where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed: and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

XXVI. And be it enacted, that where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress (Q. 1) on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed (Q. 2) to the house of correction or common gaol in

manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXVII. And be it enacted, that after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favor of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough or place, may issue such warrant of distress or commitment as aforesaid for execution of the same as if no such appeal had been brought; and if upon any such appeal, the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate (R.) that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress (S. 1) in manner aforesaid, and in default of distress he or they may commit (S. 2) the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXVIII. And be it enacted, that in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for nonpayment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the

After appeal against conviction or order justice may issue warrants of distress for execution of the same.

Pages 346, 379.

Costs of appeal, how recovered.

On payment of penalty, &c. distress not to be levied, or the party, if imprisoned for nonpayment, shall be discharged.

Page 306.

In cases of summary proceedings one justice may issue summons or warrant, &c. and after conviction or order may issue warrant of distress, &c.

Page 68.

Regulations as to the payment of clerk's fees.

said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

XXIX. And be it enacted, that in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: Provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

XXX. And be it enacted, that the fees to which any clerk of the peace, clerk of the special sessions, or clerk of the petty sessions, or clerk to any justice or justices out of sessions, shall be entitled shall be ascertained, appointed and regulated in manner following; (that is to say,) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time as they shall see fit, respectively make tables of the fees which in their opinion should be paid to the clerks of the peace, to the clerks of special and petty sessions, and to the clerks of the justices of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before her Majesty's principal secretary of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace, clerks of special sessions and petty sessions, and the clerks to the several justices of the peace throughout England and Wales; and such secretary of state shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout England and Wales, to be by them distributed to the several clerks of special sessions and petty sessions and to the clerks to

the justices within their several districts respectively; and if after such copy shall be received by such clerk or clerks he or they shall demand or receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at Westminster, by any person who will sue for the same: Provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

XXXI. And be it enacted, that in every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, in the form (T.) in the schedule to this act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty

Regulations as to whom penalties, &c. to be paid.

Clerks to keep accounts of all monies received, &c. in the form in schedule to this act, and render the same to the justices at sessions.

of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf.

Forms in the schedule deemed valid,

Metropolitan police magistrates and stipendiary magistrates in other places act alone.

Page 34.

Nothing to affect powers, &c. contained in 10 Geo. 4, c. 44, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

The lord mayor, or any alderman of London, may act alone.  
Page 34, n. (c).

Nothing to affect powers, &c. contained in 2 & 3 Vict. c. 94.

XXXII. And be it enacted, that the several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid and sufficient in law (h).

XXXIII. And be it enacted, that any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this act to be done by any one or more justice or justices of the peace; and that the several forms hereinafter mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an act passed in the third year of the reign of her present Majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an act passed in the same year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," or in an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for better defining the Powers of Justices within the Metropolitan Police District."

XXXIV. And be it enacted, that it shall be lawful for the Lord Mayor of the City of London, or for any alderman of the said city, for the time being, sitting at the Mansion House or Guildhall Justice Rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an act passed in the third

(h) The schedule of form will be found, *post*, "Forms;" and see as to the sufficiency of such forms, *Re Allison*, 10 Exch. 561. See also *ante*, pp. 59, 165, 202, 298.



year of the reign of her present Majesty, intituled "An Act for regulating the Police in the City of London."

XXXV. And be it enacted, that nothing in this act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing or care of any lunatic or insane person; nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office; nor shall anything in this act extend or be construed to extend to any complaints, orders or warrants in matters of bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for nonpayment of the same; nor shall any thing in this act extend to any proceedings under the acts of parliament regulating or otherwise relating to the labour of children and young persons in mills or factories (i).

To what this act shall not extend.

Page 60.

XXXVI. And be it enacted, that the following statutes and parts of statutes shall from and after the day on which this act shall commence and take effect be and the same are hereby repealed; (that is to say,) so much of a certain act of parliament made and passed in the eighteenth year of the reign of her Majesty Queen Elizabeth, intituled "An Act to redress Disorders in common Informers," as relates to exhibiting an information and pursuing the same in person, and not by any attorney or deputy; and so much of a certain other act made and passed in the thirty-first year of the reign of her said Majesty Queen Elizabeth, intituled "An Act concerning Informers," as relates to the time limited for exhibiting an information for a forfeiture upon any penal statute; and so much of a certain other act made and passed in the twenty-seventh year of the reign of his Majesty King George the Second, intituled "An Act for the more easy and effectual Proceeding upon Distresses to be made by Warrants of Justices of the Peace," as relates to such distresses; and so much of an act made and passed in the eighteenth year of the reign of his late Majesty King George the Third, intituled "An Act for the Payment of Costs to Parties on Complaints determined before Justices of the Peace out of Sessions, for the Payment of the Charges of Constables in certain Cases, and for the more effectual Payment of Charges to Witnesses and Prosecutors of any Larceny

After commencement of this act the following statutes and parts of statutes repealed: 18 Eliz. c. 5, s. 1, in part.

31 Eliz. c. 5, s. 5, in part.

27 Geo. 2, c. 20, ss. 1, 2.

18 Geo. 3, c. 19, ss. 1, 2, 3, 5.

(i) This section does not apply to or control the sixth section; see 26 & 27 Vict. c. 77.

33 Geo. 3, c. 55,  
s. 3.

3 Geo. 4, c. 23.

5 Geo. 4, c. 18.

6 & 7 Will. 4,  
c. 114, s. 2.

Act to extend  
to Berwick-  
upon-Tweed,  
but not to Scot-  
land, Ireland,  
&c. except as  
to backing of  
warrants under  
11 & 12 Vict.  
c. 42.

Pages 24, 25.

Commence-  
ment of act.

Act may be  
amended, &c.

or other Felony," as relates to such costs on the said complaints; and so much of a certain other act made and passed in the thirty-third year of the reign of his said late Majesty King George the Third, intituled "An Act to authorize Justices of the Peace to impose Fines upon Constables, Overseers and other Peace or Parish Officers for neglect of Duty, and on Masters of Apprentices for ill Usage of such their Apprentices, and also to make Provision for the Execution of Warrants of Distress granted by Magistrates," as relates to the executions of such warrants of distress; and a certain other act made and passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to facilitate summary Proceedings before Justices of the Peace and others;" and a certain other act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more effectual Recovery of Penalties before Justices and Magistrates on Conviction of Offenders, and for facilitating the Execution of Warrants by Constables;" and so much of a certain act made and passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "An Act for enabling Persons indicted for Felony to make their Defence by Counsel or Attorney," as relates to the right of persons accused, in cases of summary convictions, to make their defence, and to have all witnesses examined and cross-examined by counsel or attorney; and all other act or acts or parts of acts which are inconsistent with the provisions of this act, save and except so much of the said several acts as repeal any other acts or parts of acts, and also except as to proceedings now pending to which the same or any of them are applicable.

XXXVII. And be it enacted, that the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this act; but that nothing in this act shall extend or be construed to extend to Scotland or Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney or Sark, save and except the several provisions respecting the backing of warrants contained in an act of parliament passed in this present session, intituled "An Act to facilitate the Performance of the Duties of Justices of Sessions within England and Wales with respect to Persons charged with indictable Offences," and incorporated into this act, as aforesaid.

XXXVIII. And be it enacted, that this act shall commence and take effect from the second day of October in the year of our Lord one thousand eight hundred and forty-eight.

XXXIX. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.

The Schedule will be found at the commencement of the Forms of Convictions, &c., in Part II. of the Appendix.

## 11 &amp; 12 VICT. C. 44.

*An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in Execution of their Office.*  
[14th August, 1848.]

WHEREAS it is expedient to protect justices of the peace in the execution of their duty: Be it therefore enacted, &c., that every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

II. And be it enacted, that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration, that the act complained of was done maliciously and without reasonable and probable cause: Provided nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction\* shall have been quashed, either upon appeal or upon application to her Majesty's Court of Queen's Bench; nor shall any such action be brought for any thing done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for any thing done under such warrant.

III. And be it enacted, that where a conviction or order

(a) Pages 454—461.

For an act by a justice of peace within his jurisdiction the action shall be on the case, and it shall be alleged to have been done maliciously, and without probable cause.

Pages 450—454.

For an act done by him without jurisdiction, or exceeding his jurisdiction, an action may be maintained without such allegation (a);

but not for an act done under a conviction or \* *Sic.*] order, until after such conviction or order shall have been quashed;

nor for an act done under a warrant to compel appearance, if a summons were previously served and not obeyed.

If one justice make a conviction

tion or order, and another grant a warrant upon it, the action must be brought against the former, not the latter, for a defect in the conviction or order (b).

No action for issuing a distress warrant for poor rate by reason of any defect in the rate or that the party is not rateable (c).

No action against justices for the manner in which they exercise a discretionary power.

If a justice refuse to do an act, the Court of Queen's Bench may by rule order him to do it, and no action shall be brought against him for doing it.

Page 462.

After conviction or order

shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

IV. And be it enacted, that where any poor rate shall be made, allowed and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein; and that in all cases where a discretionary power shall be given to a justice of the peace by any act or acts of parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

V. And whereas it would conduce to the advancement of justice, and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means, not attended with much expense, were devised by which the legality of any act to be done by such justices might be considered and adjudged by a court of competent jurisdiction, and such justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against him: Be it therefore enacted, that in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to her Majesty's Court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

VI. And be it enacted, that in all cases where a warrant of

(b) Page 462.

(c) Page 462.

distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant for any thing which may have been done under the same by reason of any defect in such conviction or order. confirmed on appeal, no action for any thing done under a warrant upon it. Page 463.

VII. And be it enacted, that in all cases where by this act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet. If an action be brought where by this act it is prohibited, a judge may set aside the proceedings. Page 463.

VIII. And be it enacted, that no action shall be brought against any justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed. Limitation of action. Page 465.

IX. And be it enacted, that no such action shall be commenced against any justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent. Notice of action. Page 469.

X. And be it enacted, that in every such action the venue shall be laid in the county where the act complained of was committed, or in actions in the County Court the action must be brought in the court within the district of which the act complained of was committed; and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification in evidence under such plea at the trial of such action: Provided always, that no such action shall be brought in any such County Court against a justice of the peace for any thing done by him in the execution of his office if such justice shall object thereto; and if within six days after being served with a summons in any such action such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such County Court for such cause of action, all proceedings afterwards had in such County Court in any such action shall be null and void. Venue. Page 465.  
  
Defendant may plead the general issue and give special matter in evidence. Page 477.

Tender, and  
payment of  
money into  
court.

Page 468.

XI. And be it enacted, that in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into court such sum of money as he may think fit, and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, or beyond the sums so tendered and paid into court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

In what cases  
nonsuit, or  
verdict for  
defendant.

Page 468.

XII. And be it enacted, that if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the County Court) within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

Damages.

Page 480.

XIII. And be it enacted, that in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum

beyond the sum of twopence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for nonpayment of the sum he was so ordered to pay.

XIV. And be it enacted, that if the plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this act had not been passed; or if in such case it be stated in the declaration, or in the summons and particulars in the County Court if he sue in that court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client; and in every action against a justice of the peace for any thing done by him in the execution of his office the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

Costs.  
Page 480.

XV. And be it enacted, that this act shall extend only to England and Wales and the town of Berwick-upon-Tweed.

XVI. And be it enacted, that this act shall commence and take effect on the second day of October in the year of our Lord one thousand eight hundred and forty-eight.

Act to extend only to England, Wales, and Berwick.  
Commencement of act.

XVII. And be it enacted, that from and after the time this act shall so commence and take effect as aforesaid the following statutes and parts of statutes, except so far as they may repeal other statutes, shall be and shall be deemed and taken to be repealed; that is to say, so much of an act of parliament made and passed in the seventh year of the reign of his Majesty King James the First, intituled "An Act for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office," as relates to actions against justices of the peace; and so much of an act made and passed in the twenty-first year of the reign of his said Majesty King James the First, intituled "An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign," as relates to actions against justices of the peace; and so much of an act

After commencement of this act the following statutes or parts of statutes repealed.  
7 Jac. 1, c. 5.

21 Jac. 1, c. 12, s. 5.

24 Geo. 2, c. 44,  
ss. 1, 2, and  
part of s. 8.

43 Geo. 3, c.  
141.

Act to apply  
to persons  
protected by  
the repealed  
statutes.

Act may be  
amended, &c.

made and passed in the twenty-fourth year of the reign of his Majesty King George the Second, intituled "An Act for the rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in obedience to their Warrants," as relates to actions against justices of the peace; and a certain other act made and passed in the forty-third year of the reign of his late Majesty King George the Third, intituled "An Act to render Justices of the Peace more safe in the Execution of their Duty;" and all other act or acts or parts of acts which are inconsistent with the provisions of this act; save and except so much of the said several acts as repeal any other acts or parts of acts, and also except as to proceedings now pending, to which the same or any of them may be applicable.

XVIII. And be it enacted, that this act shall apply for the protection of all persons for any thing done in the execution of their office, in all cases in which, by the provisions of any act or acts of parliament, the several statutes or parts of statutes hereinbefore mentioned and by this act repealed would have been applicable if this act had not passed.

XIX. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.



## 12 & 13 VICT. C. 45.

*An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts.*

[28th July, 1849.]

Uniformity of  
time for notice  
of appeal.

Notice of ap-  
peal to be in  
writing, and  
signed.

Grounds of  
appeal to be  
stated.

Pages 348—  
355, 373.

WHEREAS, in cases of appeal to courts of general or quarter sessions of the peace, it is expedient that the law should be more uniform: Be it therefore enacted, &c., that in every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace fourteen clear days notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any court or courts, to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her or their attorney on his, her or their behalf, and the grounds of appeal shall be specified in every such notice: Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give



evidence of any other ground of appeal besides those set forth in such notice.

II. And be it enacted, that none of the provisions hereinbefore contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted.

Act not to affect notices of appeal against orders of removal, orders of bastardy, &c.  
Page 348.

III. And whereas a statement of the grounds of appeal, when required by this or any other statute, is for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial: Be it therefore enacted, that upon the hearing of any appeal to any court of general or quarter sessions of the peace no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: Provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

Defects in statement of grounds of appeal.  
Page 373.

Amendment of grounds of appeal.

IV. And be it enacted, that if in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall in the opinion of the court determining the appeal be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal.

Frivolous grounds of appeal.  
Pages 373, 382.

V. And be it enacted, that upon any appeal to any court of general or quarter sessions of the peace the court before whom the same shall be brought may, if it think fit, order and direct

Sessions to have a general power to give costs in all

cases of appeal.

Page 379.

11 & 12 Vict.  
c. 43.

Frivolous appeals.

Page 356.

Amendment of orders or judgments of justices on appeal or return to certiorari.

Pages 292, 373.

Rule for certiorari to state objections.

Amendment of recognizances.  
Page 357.

the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an act passed in the twelfth year of her Majesty's reign, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders."

VI. And for the more effectual prevention of frivolous appeals, be it enacted, that any court of general or quarter sessions of the peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid.

VII. And whereas in many cases, where justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, or on removal by certiorari into the Court of Queen's Bench, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matters in question; for remedy thereof be it enacted, that if upon the trial of any appeal to any court of general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order or judgment brought up upon a return to a writ of certiorari shall be allowed unless such omission or mistake shall have been specified in the rule for issuing such certiorari.

VIII. And whereas the statutes giving a right of appeal against orders or summary convictions frequently require a recognizance

or recognizances to be entered into as a condition of such appeal, and appellants are liable to be prevented from trying their appeals upon the merits, in consequence of imperfections in the taking of such recognizances: Be it enacted, that where any recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance, or new and sufficient recognizances, to be entered into before such court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any statute or statutes for that purpose.

IX. And be it enacted, that the decisions of the court of general or quarter sessions of the peace upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of certiorari or mandamus, or otherwise.

Decisions of sessions, when final.  
Page 374.

X. And be it enacted, that every court of general or quarter sessions of the peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended which is given to courts of oyer and terminer and general gaol delivery with regard to offences tried before such last-mentioned courts by virtue of an act of the twelfth year of her Majesty's reign, intituled "An Act for the Removal of Defects in the Administration of Criminal Justice;" and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared.

Amendment of indictment(a).

11 & 12 Vict.  
c. 46.

XI. And be it enacted, that at any time after notice given Power to state a special case

(a) See 14 & 15 Vict. c. 100, s. 1.

without going  
to the sessions  
previously.  
Page 377.

of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent, and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions upon an appeal duly entered and continued.

References to  
arbitration (*b*).  
9 & 10 Will. 3,  
c. 15.  
Page 378.

XII. And whereas by a statute passed in the tenth year of King William the Third, intituled "An Act for determining Differences by Arbitration," provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes for which there is no other remedy but by personal action or by suit in equity; and whereas it is expedient in like manner to facilitate and render more effectual references to arbitration of controversies and disputes for which the remedy is by appeal to a court of general or quarter sessions of the peace: Be it enacted, that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate, or other matter (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attornies, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons; and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said act of King William the Third with regard to the cases therein provided for; and every award

(*b*) See 17 & 18 Vict. c. 125 (Common Law Procedure, 1854), ss. 5, 12, 17.

or umpirage duly made under this act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions.

XIII. And be it enacted, that it shall be lawful for any court of general or quarter sessions of the peace before which any appeal (except against a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), shall be brought to order, with consent of the parties or their attornies, that the matter or matters of such appeal be referred to arbitration to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper: and such order may be made a rule of the Court of Queen's Bench, on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court: Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the same back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the court of general or quarter sessions to enter continuances and hear the appeal.

References by order of court of sessions.

XIV. And be it enacted, that if upon any reference to arbitration under this act it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of general or quarter sessions of the peace to enter continuances and hear the appeal.

Where reference abortive Queen's Bench may order sessions to hear the appeal.

XV. And be it enacted, that the several provisions relating to arbitrations contained in an act of the fourth year of King William the Fourth, intituled "An Act for the further Amendment of the Law and the better Advancement of Justice," shall be deemed and taken to be applicable to arbitrations under this act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the court of general or quarter sessions of the peace would have had on the trial of the appeal.

3 & 4 Will. 4, c. 42, to be applicable to references under this act. Arbitrators to have power of amendment.

Recognizances  
for prosecution  
and trial of  
appeal.  
Page 356.

3 Geo. 4, c. 46.  
Levy and  
recovery of  
fines, issues and  
amerciaments.  
Page 310.

Enforcing  
orders of ses-  
sions.  
Page 384.

Not to extend  
to Scotland or  
Ireland.

Commence-  
ment of act.

Act may be  
amended, &c.

XVI. And be it enacted, that no recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case without previously going to the court of general quarter sessions, or by any submission to arbitration under the provisions of this act.

XVII. And whereas by an act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures and Recognizances estreated," provision is made for authorizing the levying and recovery of fines, issues, amerciaments, and forfeited recognizances set, imposed, lost, or forfeited by or before any justice or justices of the peace in England; and whereas it is expedient that the subsequent proceedings in such cases should be uniform: Be it enacted that the proceedings subsequent to such authority given for so levying and recovering as aforesaid shall and may be the same in all respects in the case of such fines, issues, and amerciaments as are by the said act provided, permitted and required in the case of such forfeited recognizances.

XVIII. And be it enacted that in all cases where any order shall be made by any court of general or quarter sessions of the peace it shall be lawful for the Court of Queen's Bench, or for any judge of that court at Chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

XIX. And be it enacted, that nothing in this act contained shall extend to Scotland or Ireland.

XX. And be it enacted, that this act shall come into operation on the first day of November, one thousand eight hundred and forty-nine.

XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.



## 18 &amp; 19 VICT. c. 126.

*"An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases."*

[The provisions of this statute, which enables justices to decide summarily certain cases of larceny, are set forth, *post*, tit. "LARCENY" (a). See also, *ante*, p. 154.]



## 20 &amp; 21 VICT. c. 43.

*An Act to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace.* Page 442.  
[17th August, 1857.]

WHEREAS it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: Be it enacted, &c.:

I. In the interpretation and for the purposes of this Act, the following words shall have the meaning hereinafter assigned to them; that is to say, Interpretation of terms.

"Superior Courts of Law" shall for England mean the Supreme Courts of Law at Westminster, and for Ireland the Supreme Courts at Law at Dublin:

"Court of Queen's Bench" shall mean for England the Court of Queen's Bench at Westminster, and for Ireland the Court of Queen's Bench at Dublin.

II. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called "the appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and Justices on application of a party aggrieved, to state a case for the opinion of superior court. Page 442.

(a) See also under the same head the statutes relating to juvenile offenders convicted of larceny.

signed, to the other party to the proceeding in which the determination was given, hereinafter called "the respondent."

Security and notice to be given by the appellant.  
Page 444.

III. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the Schedule to this Act annexed marked (A.), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

Justices may refuse a case where they think the application frivolous.  
Page 442.

IV. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her Majesty's Attorney-General for England or Ireland, as the case may be.

Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.

V. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Superior court to determine the questions on the case;

VI. The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the deter-



mination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination. its decisions to be final.

VII. The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended. Case may be sent back for amendment.  
Page 447.

VIII. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time. Powers of superior court may be exercised by a judge at chambers.

IX. After the decision of the superior court in relation to any case stated for their opinion under this act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively. After the decision of superior court, justices may issue warrants.

X. No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this act. Certiorari not to be required for proceedings under this act.

XI. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned. Superior courts may make rules for proceedings.  
Post, p. 542.

XII. The words "justice or justices" in this act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate. "Justices" to include a stipendiary magistrate.

XIII. In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not Recognizances how to be enforced.

been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *primâ facie* evidence of the said recognizance having been forfeited: Provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an act passed in the second and third years of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this act, in as ample a manner as if they had been herein re-enacted and made part of the same.

2 & 3 Vict.  
c. 71, s. 45.

Appellants  
under this  
act not allowed  
to appeal to  
quarter ses-  
sions.

Extent of act.

XIV. Any person who shall appeal under the provisions of this act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

XV. This act shall not extend to Scotland.

#### SCHEDULE (A.)

##### *Fees to be taken by Clerks to Justices.*

For drawing case and copy, where the case does not exceed five folios of ninety words each .. .. .	s.	d.
10	0	
Where the case exceeds five folios, then for every additional folio .. .. .	1	0
For the recognizance to be taken in pursuance of the act	5	0
For every enlargement or renewal thereof .. .. .	2	6
For certificate of refusal of case .. .. .	2	0

In pursuance of the 11th section of the preceding act, two rules were made in Michaelmas Term, 1857:—

Rule 1 orders that in cases of appeal to a superior court, the

15th and 16th Practice Rules, Hil. Term, 1853 (a), so far as the same are applicable, are to be observed.

By rule 2, when an appeal is to be heard before a judge at chambers, the appellant shall obtain an appointment for such hearing, and shall forthwith give notice thereof to the respondent, and shall, four clear days before the day appointed for the hearing, deliver at the judge's chambers a copy of the appeal.

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28 VICT. C. 18.

*An Act for amending the Law of Evidence and Practice on Criminal Trials.*

[The material provisions of this Act will be found stated at length, *ante*, p. 367, n. (n).]

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28 & 29 VICT. C. 127.

*An Act to amend the Law relating to small Penalties.*

[6th July, 1865.]

WHEREAS it is expedient to amend the law relating to small penalties: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as "The Small Penalties Act, 1865."

2. This act shall come into operation on the first day of August, one thousand eight hundred and sixty-five.

Commence-  
ment of act.

(a) By Reg. Gen. Hil. Term, 1853, r. 15, no motion or rule for a *conci- lium* is required, but special cases are to be set down for argument in the special paper at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

By r. 16, four clear days before the day appointed for argument, "the plaintiff" (*i.e.* here, the person bringing up the case) must deliver copies of the special case with the points intended to be insisted on to the chief and senior

*puise* judge, and the other side to the two other judges; and in default by either party, the other may on the day following deliver such copies, and the party making default shall not be heard until he has paid for them, or deposited with the master a sufficient sum to pay for them. If the statement of the points have not been exchanged between the parties, each party is, in addition to the two copies left by him, to deliver his statement of the points to the other two judges, either by marking them in the margin of the books delivered, or on separate papers.

Definition of "penalty." 3. The word "penalty" in this act shall include any sum of money recoverable in a summary manner.

Recovery of small penalties. 4. Where upon summary conviction any offender may be adjudged to pay a penalty not exceeding five pounds, such offender, in case of nonpayment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid:

For any penalty—	The imprisonment not to exceed—
Not exceeding ten shillings .. .. .	Seven days.
Exceeding ten shillings and not exceeding one pound .. .. .	Fourteen days.
Exceeding one pound but not exceeding two pounds .. .. .	One month.
Exceeding two pounds but not exceeding five pounds .. .. .	Two months.

Saving as to hard labour. 5. Nothing in this act contained shall affect the power of imposing hard labour in addition to imprisonment in cases where hard labour might, on nonpayment of the penalty, have been so imposed if this act had not passed.

Application of act. 6. This act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any act of parliament, whether passed before or after the commencement of this act; and all provisions of any act of parliament authorising, in the case of nonpayment of a penalty not exceeding five pounds, a longer term of imprisonment than is provided by this act shall be repealed.

Not to apply to penalties under revenue acts. 7. This act shall not apply to any penalty imposed by any act of parliament relating to the inland revenue.

Extent of act. 8. This act shall extend to England only.

## II. FORMS.

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### I. APPEAL (a).

#### 1. *General Form of Notice of Appeal against a Conviction.*

to wit. } To            of            in the said county.  
 notice that I,           , do intend at the next general quarter sessions [or "quarter sessions"] of the peace to be holden in and for the said county of           , at           , in the said county, to appeal against a certain conviction of me the said           , by           , esquire, one of her majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, on           , &c., at           , &c. [stating the offence], and that the cause and grounds of such appeal are that I am not guilty of the said offence, and that, &c. [stating any other cause of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice. Dated this            day of, &c.

Witness, D. C.

A. B.

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#### 2. *General Form of Recognizance to try an Appeal against a Conviction.*

to wit. } Be it remembered, that on the            day of           ,            in the            year of the reign of our sovereign lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith,           , of           , in the said county (labourer),           , of           , in the said county (yeoman), and           , of           , in the said county (farmer), personally came before me,           , one of her majesty's justices of the peace in and for the said county, and acknowledged themselves to owe our said lady the queen the sum of            pounds each, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the queen, her heirs and successors, if default shall be made in the condition following:

Whereas by a certain conviction under the hand and seal of A. B., one of her majesty's justices of the peace for the county

(a) See 1 Burn's Justice, tit. "Appeal," pp. 176, 177 (29th edit.), and ante, p. 351.



for costs, and did order that the said sums should be paid by the said J. W. on or before the       day of       last, and that in default of payment on or before that day he the said C. D. did, by the said conviction, adjudge the said J. W. to be imprisoned and kept to hard labour in the house of correction at       , in the county aforesaid, for the space of two calendar months, unless the said sums should be sooner paid; and that the said C. D. did, in and by the said conviction, direct that the said sum of two pounds should be paid to P. S., being one of the overseers of the poor of the said parish of       , to be by him applied according to the directions of the statute in such case made and provided; and that the sum of seventeen shillings for costs should be paid to the said       the informant, on whose information the said complaint was founded. [*Let this agree with the conviction.*]

Now therefore at the said court so holden as aforesaid by adjournment at       as aforesaid, upon hearing of the said appeal, it is now here ordered and adjudged by the said court that the said conviction be, and the same is hereby in all things affirmed; and it is also now here by the same court further ordered and adjudged that the said J. W. be dealt with and punished according to the said conviction, and also that he the said J. W. do and shall pay to the said       , the said informant, and the respondent in the said appeal, the sum of       , the amount of the costs sustained by the said       , and by him incurred by reason of the said appeal, and now by the said court here adjudged to be paid to him by the said J. W., according to the statute in such case made and provided.

## II. CERTIORARI.

### 1. *Certiorari*—*Recognizance* (c).

*Liverpool,* } Be it remembered, that on the       day of       ,  
*Lancashire,* } in the       year of the reign of our sovereign  
to wit. } lady Victoria, by the grace of God of the united  
kingdom of Great Britain and Ireland queen, defender of the  
faith, C. H., of Liverpool, in the county of Lancaster, merchant,  
and M. W., of the same place, merchant, came before me, J. G.,  
esq., one of the keepers of the peace, and justices of our lady  
the queen, in and for the borough of Liverpool, and acknow-  
ledged to owe to our sovereign lady the queen the sum of fifty  
pounds, of lawful money of Great Britain, to be levied upon  
their goods and chattels, lands and tenements, to her majesty's

(c) See *ante*, p. 420.

use, upon condition, that if C. D. should prosecute with effect, *without any wilful or affected delay*, at his own proper costs and charges, a writ of *certiorari* issued out of the court of our said lady the queen, before the queen herself, at Westminster, to remove into the said court all and singular the records of conviction, of whatever trespasses and contempts against the form of the statute made and passed in the        year of her present majesty's reign, intituled, "An Act, &c.," whereof the said C. D. is convicted before me the said J. G., and shall pay to the prosecutors, within one month next after the said record of conviction [*or "order"*] shall be confirmed in the said court, all their said full costs and charges, to be taxed, according to the course of the said court, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the  
day and year first aforesaid  
at       , before me, J. G.

C. H.  
M. W.

A blank recognizance is usually transmitted from the Crown Office along with the *certiorari*; and, when taken and acknowledged, is returned with the writ, and filed with other recognizances, in bundles inscribed with the year of the queen's reign.

If the conviction be quashed, the recognizance is cancelled, by being struck through, and is marked in the margin, "discharged because the conviction quashed."

## 2. *Writ of Certiorari to a single Justice.*

### *To return a Conviction.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to       , one of our justices assigned to keep our peace in and for the county of       , and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, greeting: We being willing, for certain reasons, that all and singular records of conviction, of whatsoever trespasses and contempts against the form of a certain statute, &c., whereof C. D. is before you convicted (as it is said), be sent by you before us, do command you, that you send, under your hand and seal, before us, in        days, from        (*d*), wheresoever we shall then be in England, all and singular the said records of conviction, with all things touching the same, as fully and per-

(*d*) The writ is sometimes made returnable "*immediately on the receipt of this writ.*"



fectly as they have been made by you, and now remain in your custody or power, together with this our writ, that we may further cause to be done thereon what of right, and according to the law and custom of England, we shall see fit. Witness, Lord John Campbell, at Westminster, this            day of            , in the            year of our reign.

By the Court.

### 3. *Return(e) to a Writ of Certiorari, by a single Justice.*

[*To be indorsed on the back of the Certiorari,*] "The execution of this writ appears in the schedule hereunto annexed,"

"R. R." [*the name of the convicting magistrate*].

[*The following to be written on a separate Parchment :*]

*Glamorganshire.* I, R. R., one of the keepers of the peace and justices of our lady the queen, assigned to keep the peace within the said county, and to hear and determine divers felonies, trespasses and other misdemeanors committed in the said county, by virtue of this writ to me delivered, do, under my seal, certify unto her majesty, in her Court of Queen's Bench, the record of conviction, of which mention is made in the same writ. In witness whereof I, the said R. R., have to these presents set my seal. Given at L., in the said county, this            day of            , in the            year of the reign of our said lady the queen, and in the year of our Lord one thousand eight hundred and fifty            .

R. R. (L. S.)

*Note.*—The conviction is to be annexed to the writ, and returned along with it, but not the informations or depositions (*f*).

The *Certiorari* being to return "all records of conviction," the conviction should regularly, as a record, have been returned on parchment; and if it had been returned on paper, the return might have been quashed. Now, however, by 11 & 12 Vict. c. 43, s. 17, convictions may be drawn up on parchment or paper, and before that statute, there are some, though very few, instances of a conviction upon the files engrossed on paper: but these must have been cases where no objection was made on that account (*g*).

(*e*) See *ante*, p. 425 *et seq.*

426, *et seq.*

(*f*) See Lofft. 348, and *ante*, p.            (*g*) *Ante*, p. 158, n. (*b*).

4. *Return by the Chairman to a Certiorari directed to the Justices in Sessions, to remove a Conviction or Order confirmed upon Appeal.*

[*To be indorsed on the back of the Certiorari.*]

"The answer of J. C., esq., one of the keepers of the peace of our lady the queen, and of the justices of our said lady the queen, assigned to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the county palatine of Chester.

"The execution of this writ appears in certain schedules hereto annexed."

"*John C——. (L. s.)*"

*Note.*—It is sufficient, if the seal only be affixed without the name.

With the *certiorari*, indorsed as above, must be returned as well the original conviction filed at the sessions as also the order or orders of sessions confirming it, with the adjournments, if any have taken place. The order of sessions is returned in this form:—

Return of order  
of sessions con-  
firming convic-  
tion.

At the general quarter sessions of the peace of our lady the queen, held at the Castle of Chester, in and for the said county, on Tuesday, the       day of       , in the year of our Lord one thousand eight hundred and fifty-       , and in the       year of the reign of our sovereign lady Victoria, before R. C. &c. justices of our said lady the queen, assigned to keep the peace of our lady the queen, in and for the county of Chester, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed within the said county.

Whereas, by a conviction or judgment, bearing date the day of       , in the year       , under the hands and seals of, &c. thereby setting forth, &c. [*here set out the whole of the conviction in the third person, and in the past tense (h)*]. And whereas he, the said T. M. [*the person convicted*], did appeal against the said conviction or judgment to the then next and now last court of general quarter sessions of the peace, held at the castle of Chester, in and for the said county of Chester, on Tuesday, the

Adjournment.

day of January, in the year, &c. when the said appeal was ordered to be continued to this present sessions, and of which said order of continuance the said T. W. [*the prosecutor*] had ten days' notice previous to this present session: Now, upon hearing the said appeal, and what hath been alleged and proved on each party's behalf, and full debate and consideration had on the premises, It is ordered by this court, that the first-mentioned

Confirmed.

(h) See the observations at the end of this form.

conviction or judgment shall be, and is hereby confirmed and made absolute: And it is further ordered, by this court, that the said T. M., upon sight of this order, or a copy thereof left with him, pay to the said T. W. the sum of £ , towards the costs (i) and charges in the law, by him the said T. W. reasonably expended in and about the defence of the said appeal.

Award of costs.

By the Court.

*Note.*—Though the whole conviction, as returned by the magistrate, is here set out, it is sufficient, as appears from other precedents, to state merely the substance of the conviction.

### III. CONVICTIONS, SUMMONSES, WARRANTS, ETC.

#### I. SCHEDULE TO 11 & 12 VICT. CAP. 43 (k).

(A.)

*Summons to the Defendant upon an Information or Complaint (l).*

to wit. } To A. B. of , labourer.

Whereas information hath this day been laid [or complaint hath this day been made] before the undersigned, [one] of her

(i) This was a case where the sessions were required by the statute to award costs on appeal.

(k) See *ante*, pp. 59—165. The forms given in note (l), *infra*, are

not in this schedule. The venue is omitted in some of the forms in the schedule, but it should be inserted in all magisterial proceedings.

(l) The following is a general form of information or complaint:—

to wit. } Be it remembered, that on the      day of      , in the      year of our Lord 186 , at      , in the said [county], C. D., of      , labourer [upon oath, if so required], informeth me the undersigned, one of her majesty's justices of the peace in and for the said [county], that A. B., of the parish of      , in the said county, labourer, within the space of ["six calendar months," or such time as may be limited by the statute], last past, to wit, on the      day of      instant, at      , in the said [county], did [state the offence as in the conviction], contrary to the form of the statute in such case made and provided.

Information and complaint.  
Page 64.

E. F.

If preferred by an attorney or agent, in the place of "C. D.," state, "G. H., the duly authorized attorney [or 'agent'] in this behalf of C. D.," &c.

By attorney or agent.  
Page 68.

If preferred before a justice of two adjoining counties, &c., say, "of and for the counties [or 'ridings, divisions, liberties, cities or boroughs'] of A. two adjoining

majesty's justices of the peace in and for the said [county] of , for that you [*here state shortly the matter of the information or complaint*]: These are therefore to command you, in her majesty's name, to be and appear on , at o'clock in the forenoon, at , before such justices of the peace for the said county as may then be there, to answer to the said information [*or complaint*], and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.

J. S. (I. S.)

(B.)

*Warrant where the Summons is disobeyed.*

To the constable of , and to all other peace officers to wit. } in the said [county] of .

Whereas on last past information was laid [*or complaint was made*] before the undersigned, [*one*] of her majesty's justices of the peace in and for the said county of , for that A. B. [*&c., as in the summons*]: And whereas I then issued my summons unto the said A. B., commanding him, in her ma-

counties, &c.  
Page 23.

Before a justice acting for a detached part of another county.  
Page 27.

Before a stipendiary magistrate.  
Page 34.

Before a metropolitan police magistrate.  
Page 34.

At a divisional petty session.  
Page 36.

Information against an aider or abettor.  
Page 72.

Information against a counsellor or procurer.  
Page 72.

and B., being next adjoining counties [*or 'ridings,' &c.*], at C. in the said county [*or 'riding,' &c.*] of B."

When acting for a detached part of another county, say, "of and for the county of A., and acting for the county of B., at C. in the said county of A., the parish where the offence [*or 'matter of complaint'*] hereinafter mentioned was committed [*or 'arose'*], being a detached part of the said county of B. and surrounded in part [*or 'in whole'*] by the said county of A."

When before a stipendiary magistrate, say, "in and for the [*insert the district or place*], being a stipendiary magistrate for the said [*district, &c.*], sitting in open court and having by law the power to do acts usually required to be done by two or more justices of the peace."

When before a metropolitan police magistrate, "in and for the county of Middlesex, one of the police magistrates of the metropolis, sitting at the police court [Great Marlborough Street, in the parish of St. James, Westminster], within the metropolitan district."

If at a divisional petty session, say, "at petty sessions in and for the division of A., in the said county of B., at C., in the same division and county."

After stating the offence against the principal, as in the information, *supra*, add, "and that G. H., of, &c., was then and there present [*'maliciously,' or as the statute may be*] aiding and abetting the said A. B. to do and commit the said offence, contrary to the form of the statute in such case made and provided."

After stating the offence against the principal, add, "and that G. H., of, &c., before the said offence was committed as aforesaid, to wit, on the day of aforesaid, at the parish of [*aforesaid*], did [*'maliciously,' or as the case may be*] counsel and procure the said A. B. to commit the said offence, contrary, &c."

jesty's name, to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, at \_\_\_\_\_, before such justices of the peace for the said county as might then be there, to answer to the said information [or complaint], and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in her majesty's name, forthwith to apprehend the said A. B., and to bring him before some one or more of her majesty's justices of the peace in and for the said county, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the [county] aforesaid.  
J. S. (L. S.)

## (C.)

*Warrant in the first instance.*

To the constable of \_\_\_\_\_, and to all other peace officers to wit. } in the said [county] of \_\_\_\_\_.

Whereas information hath this day been laid before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that A. B. [here state shortly the matter of the information]; and oath being now made before me substantiating the matter of such information: These are therefore to command you, in her majesty's name, forthwith to apprehend the said A. B., and to bring him before some one or more of her majesty's justices of the peace in and for the said county, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.  
J. S. (L. S.)

## (D.)

*Warrant of Committal for safe Custody during an Adjournment of the Hearing.*

To W. T., constable of \_\_\_\_\_, and to the keeper of the to wit. } [house of correction] at \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past information was laid [or complaint was made] before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that, [&c.,

as in the summons]: And whereas the hearing of the same is adjourned to the            day of            instant, at            o'clock in the forenoon, at            , and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you the said constable, in her majesty's name, forthwith to convey the said A. B. to the [house of correction] at            , and there deliver him into the custody of the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, and there safely keep him until the            day of            instant, when you are hereby required to convey and have him the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such justices of the peace for the said [county] as may then be there, to answer further to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this            day of            , in the year of our Lord            , at            , in the [county] aforesaid.

J. S. (L. S.)

(E.)

*Recognizance for the Appearance of the Defendant where the Case is adjourned, or not at once proceeded with.]*

to wit. } Be it remembered, That on            A. B. of            , labourer,  
          } and L. M. of            , grocer, personally came before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of            , and severally acknowledged themselves to owe to our sovereign lady the queen the several sums following; (that is to say,) the said A. B. the sum of            , and the said L. M. the sum of            , of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed.

Taken and acknowledged, the day and }  
year first above mentioned, at            , }  
before me,            J. S. }

The condition of the within-written recognizance is such, that if the said A. B. shall personally appear on the            day of            instant, at            o'clock in the forenoon, at            , before such justices of the peace for the said [county] as may then be there, to answer further to the information [or complaint] of C. D. exhibited against the said A. B., and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

*Notice of such Recognizance to be given to the Defendant  
and his Surety.*

Take notice, That you A. B. are bound in the sum of \_\_\_\_\_, and you L. M. in the sum of \_\_\_\_\_, that you A. B. appear personally on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, at \_\_\_\_\_, before such justices of the peace for the said county as shall then be there, to answer further to a certain information [or complaint] of C. D., the further hearing of which was adjourned to the said time and place, and unless you appear accordingly the recognizance entered into by you A. B., and by L. M. as your surety, will forthwith be levied on you and him.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_\_\_.

J. S.

(F.)

*Certificate of Nonappearance to be endorsed on the Defendant's  
Recognizance.*

I hereby certify, That the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.

(G. 1.)

*Summons of a Witness.*

to wit. } To E. F. of \_\_\_\_\_, in the said [county] of \_\_\_\_\_.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [ &c., as in the summons ]; and it hath been made to appear to me upon [oath] that you are likely to give material evidence on behalf of the [prosecutor, or complainant, or defendant] in this behalf: These are therefore to require you to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, at \_\_\_\_\_, before such justices of the peace for the said county as may then be there, to testify what you shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (l. s.)

(G. 2.)

*Warrant where a Witness has not obeyed a Summons.*

To the constable of \_\_\_\_\_ and to all other peace  
to wit. } officers in the said [county] of \_\_\_\_\_

Whereas information was laid [or complaint was made] before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [&c., as in the summons]; and it having been made to appear to me upon oath that E. F. of \_\_\_\_\_ in the said county, labourer, was likely to give material evidence on behalf of the [prosecutor], I did duly issue my summons to the said E. F., requiring him to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon of the same day at \_\_\_\_\_, before such justices of the peace for the said county as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information [or complaint]: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F., and of a reasonable sum having been paid [or tendered] to him for his costs and expenses in that behalf: And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect: These are therefore to command you to take the said E. F., and to bring and have him on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L. S.)

(G. 3.)

*Warrant for a Witness in the first instance.*

To the constable of \_\_\_\_\_ and to all other peace  
to wit. } officers in the [county] of \_\_\_\_\_

Whereas information was laid [or complaint was made] before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [&c., as in the summons]; and it being made to appear before me upon oath that E. F. of \_\_\_\_\_, [labourer], is likely to give material evidence on behalf of the [prosecutor] in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, or before such other justices of the



peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [*or* complaint].

Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      , in the [*county*] aforesaid.

J. S. (L. s.)

(G. 4.)

*Commitment of a Witness for refusing to be sworn or to give Evidence.*

To W. T., constable of                      , in the said [*county*] of to wit. }                      , and to the keeper of the [*house of correction*] at                      .

Whereas information was laid [*or* complaint was made] before the undersigned, [*one*] of her majesty's justices of the peace in and for the said [*county*] of                      , for that [*&c., as in the summons*]; and one E. F. now appearing before me such justice as aforesaid on                      , at                      , and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do [*or* being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now here put to him], without offering any just excuse for such his refusal: These are therefore to command you the said constable to take the said E. F., and him safely convey to the [*house of correction*] at                      aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [*house of correction*] to receive the said E. F. into your custody in the said [*house of correction*], and there imprison him for such his contempt for the space of                      days, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      , in the [*county*] aforesaid.

J. S. (L. s.)

(H.)

*Warrant to remand a Defendant when apprehended.*

To W. T., constable of                      , and to the keeper of the to wit. }                      [*house of correction*] at                      .

Whereas information was laid [*or* complaint was made] before the undersigned, [*one*] of her majesty's justices of the peace in and for the said [*county*] of                      , for that [*&c., as in the summons or warrant*]: And whereas the said A. G. hath been appre-

hended under and by virtue of a warrant upon such information [or complaint], and is now brought before me as such justice as aforesaid: These are therefore to command you the said constable, in her majesty's name, forthwith to convey the said A. B. to the [house of correction] at , and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper to receive the said A. B. into your custody in the said [house of correction], and there safely keep him until next the day of instant, when you are hereby commanded to convey and have him at , at o'clock in the forenoon of the same day, before such justices of the peace of the said [county] as may then be there, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.

J. S. (L. s.)

(I. 1.)

*Conviction for a Penalty to be levied by Distress, and in default of sufficient Distress Imprisonment(a).*

Be it remembered, that on the day of , to wit. } in the year of our Lord , at , in the said [county], A. B. is convicted before the undersigned, [one] of her majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of [stating the penalty, and also the compensation, if any,] to be paid and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before next] \*I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress\* I adjudge the said A. B. to be imprisoned in the [house of correction] at , in the said county, [there to be kept to hard labour] for the space of , unless the said several sums, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the [county] aforesaid.

J. S. (L. s.)

\* Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods

(a) See 28 & 29 Vict. c. 127 ("The Small Penalties Act, 1865,"), ante, p. 543.

whereon to levy a distress, then, instead of the words between the asterisks\*\*, say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c., *as above to the end.*

## (I. 2.)

*Conviction for a Penalty, and in default of Payment Imprisonment (a).*

to wit. } Be it remembered, that on the                      day of                      ,  
 } in the year of our Lord                      , at                      , in the  
 said [county] A. B. is convicted before the undersigned, [one] of  
 her majesty's justices of the peace for the said county, for that  
 [he the said A. B., &c., stating the offence, and the time and place  
 when and where it was committed]; and I adjudge the said A. B.  
 for his said offence to forfeit and pay the sum of                      [stating  
 the penalty, and the compensation, if any], to be paid and applied  
 according to law, and also to pay to the said C. D. the sum of  
 , for his costs in this behalf; and if the said several  
 sums be not paid forthwith [or on or before                      next] I  
 adjudge the said A. B. to be imprisoned in the [house of cor-  
 rection] at                      , in the said [county], [and there to be kept to  
 hard labour] for the space of                      , unless the said several sums  
 [and the costs and charges of conveying the said A. B. to the  
 said house of correction,] shall be sooner paid.

Given under my hand and seal, the day and year first above  
 mentioned, at                      , in the [county] aforesaid.

J. S. (I. s.)

## (I. 3.)

*Conviction when the Punishment is by Imprisonment, &c.*

to wit. } Be it remembered, that on the                      day of                      ,  
 } in the year of our Lord                      , in the said [county]  
 A. B. is convicted before the undersigned, [one] of her majesty's  
 justices of the peace for the said county, for that [he the said  
 A. B., &c., stating the offence, and the time and place when and  
 where committed]; and I adjudge the said A. B. for his said  
 offence to be imprisoned in the [house of correction] at                      ,  
 in the said [county], [and there kept to hard labour] for the space  
 of                      ; and I also adjudge the said A. B. to pay to the said

(a) See n. (a), ante, p. 558.

C. C. the sum of \_\_\_\_\_, for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before next] then \*I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf\* I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of \_\_\_\_\_, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at \_\_\_\_\_, in the county aforesaid.

J. S. (L. S.)

\* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks\*\*, say, "inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress], I adjudge," &c.

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(K. 1.)

*Order for Payment of Money to be levied by Distress, and in default of Distress Imprisonment.*

} Be it remembered that on \_\_\_\_\_ complaint was to wit. } made before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B. although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here at this day before such justices of the peace for this said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of \_\_\_\_\_ forthwith, or, on or before \_\_\_\_\_ next, or as the statute may require], and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in this behalf; and if the said several sums be not paid forth-



sums be not paid forthwith [or on or before next], I adjudge the said A. B. to be imprisoned in the [house of correction] at , in the said county, [there to be kept to hard labour] for the space of , unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.

J. S. (L.S.)

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(K. 3.)

*Order for any other Matter where the disobeying of it is punishable with Imprisonment.*

Be it remembered, that on complaint was to wit. } made before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of , for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit, on , at , the parties aforesaid appear before me, the said justice, [or the said C. D. appears before me, the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such justices of the peace for the said county as should now be here, to answer to the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do therefore adjudge the said A. B. to [here state the matter required to be done], and if upon a copy of a minute of this order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the [house of correction] at , in the said county, [there to be kept to hard labour] for the space of [unless the said order be sooner obeyed, if the statute authorize this]; and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before next], I order the same to be levied by distress and sale of the goods and chattels of the said A. B., [and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of , to commence at and from the

termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid].

Given under my hand and seal, this                      day of                      , in  
the year of our Lord                      , at                      , in the [county] aforesaid.  
J. S. (L.S.)

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*Order of Dismissal of an Information or Complaint.*

                    } Be it remembered, that on                      information was  
to wit.            } laid [or complaint was made] before the under-  
signed, [one] of her majesty's justices of the peace in and for  
the said [county] of                      , for that [&c., as in the summons to  
the defendant], and now at this day, to wit, on                      , at                      ,  
both the said parties appear before me in order that I should  
hear and determine the said information [or complaint], [or the  
said A. B. appeareth before me, but the said C. D., although  
duly called, doth not appear]; whereupon, the matter of the  
said information [or complaint] being by me duly considered,  
[it manifestly appears to me that the said information [or com-  
plaint] is not proved, and\*] I do therefore dismiss the same,  
[and do adjudge that the said C. D. do pay to the said A. B.  
the sum of                      for his costs incurred by him in his defence in  
this behalf; and if the said sum for costs be not paid forthwith  
[or on or before the                      ], I order that the same be levied by  
distress and sale of the goods and chattels of the said C. D.,  
and in default of sufficient distress in that behalf I adjudge the  
said C. D. to be imprisoned in the [house of correction] at                      ,  
in the said county, [and there kept to hard labour] for the space  
of                      , unless the said sum for costs, and all costs and charges  
of the said distress [and of the commitment and conveying of the  
said C. D. to the said house of correction], shall be sooner paid.

Given under my hand and seal, this                      day of                      , in  
the year of our Lord                      , at                      , in the [county] aforesaid.  
J. S. (L.S.)

\* If the informant or complainant do not appear these words  
may be omitted.

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(M.)

*Certificate of Dismissal.*

I hereby certify, that an information [or complaint] preferred  
by C. D. against A. B., for that [&c., as in the summons], was

this day considered by me, one of her majesty's justices of the peace in and for the county of \_\_\_\_\_, and was by me dismissed [with costs].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 185 . J. S.

(N. 1.)

*Warrant of Distress upon a Conviction for a Penalty.*

} To the constable of \_\_\_\_\_, and to all other peace  
to wit. } officers in the said [county] of \_\_\_\_\_.

Whereas A. B., late of \_\_\_\_\_, [labourer], was on this day [or on last past] duly convicted before the undersigned, [one] of her majesty's justices of the peace in and for the said county of \_\_\_\_\_, for that [stating the offence as in the conviction], and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay [&c., as in the conviction], and should also pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid [forthwith] the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that in default of sufficient distress the said A. B. should be imprisoned in the [house of correction] at \_\_\_\_\_, in the said county, [and there kept to hard labour] for the space of \_\_\_\_\_, unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said [house of correction], should be sooner paid: And whereas the said A. B. being so convicted as aforesaid, and being [now] required to pay the said sums of \_\_\_\_\_ and \_\_\_\_\_, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of \_\_\_\_\_ days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto \_\_\_\_\_, the clerk of the justices of the peace for the division of \_\_\_\_\_ in the said [county] that he may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, in the [county] aforesaid.

J. S. (L.S.)



(N. 2.)

*Warrant of Distress upon an Order for the Payment of Money.*

To the constable of \_\_\_\_\_, and to all other peace  
to wit. } officers in the said [county] of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past, a complaint was made before the undersigned, [one] of her majesty's justices of the peace in and for the said county of \_\_\_\_\_, for that [&c., as in the order], and afterwards, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the said parties appeared before me [or as in the order], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to [pay to the said C. D. the sum of \_\_\_\_\_ on or before the then next], and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and I thereby ordered, that if the said several sums should not be paid on or before the said \_\_\_\_\_ then next the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged, that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the [house of correction] at \_\_\_\_\_, in the said county, [and there kept to hard labour] for the space of \_\_\_\_\_, unless the said several sums, and all costs and charges of the distress [and of the commitment and conveying of the said A. B. to the said house of correction], should be sooner paid: and whereas the time in and by the said order appointed for the payment of the said several sums of \_\_\_\_\_ and \_\_\_\_\_ hath elapsed, but the said C. D. hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of \_\_\_\_\_ days after the making such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto \_\_\_\_\_, the clerk of the justices of the peace for the division of \_\_\_\_\_ in the said [county], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L.S.)

(N. 3.)

*Endorsement in backing a Warrant of Distress.*

to wit. } Whereas proof upon oath hath this day been made  
 before me, one of her majesty's justices of the  
 peace in and for the said county of , that the name of  
 J. S. to the within warrant subscribed is of the handwriting of  
 the justice of the peace within mentioned; I do therefore autho-  
 rize W. T., who bringeth to me this warrant, and all other  
 persons to whom this warrant was originally directed, or by  
 whom the same may be lawfully executed, and also all con-  
 stables and other peace officers of the said [county] of ,  
 to execute the same within the said county .

Given under my hand, this            day of            , 185 .  
 J. B.

(N. 4.)

*Constable's Return to a Warrant of Distress.*

I, W. T., constable of , in the [county] of ,  
 do hereby certify to J. S., esquire, one of her majesty's justices  
 of the peace for the said county, that by virtue of this warrant  
 I have made diligent search for the goods and chattels of the  
 within-mentioned A. B., and that I can find no sufficient goods  
 or chattels of the said A. B. whereon to levy the sums within  
 mentioned.

Witness my hand, this            day of            , 185 .  
 W. T.

(N. 5.)

*Warrant of Commitment for Want of Distress.*

to wit. } To the constable of , and to the keeper of the  
           } [house of correction] at , in the said [county]  
           } of .

Whereas, &c. [as in either of the foregoing Distress Warrants,  
 N. 1, 2, to the asterisk (\*), and then thus]: And whereas after-  
 wards, on the            day of            , in the year aforesaid, I, the  
 said justice, issued a warrant to the constable of , com-  
 manding him to levy the said sums of            and            by dis-  
 tress and sale of the goods and chattels of the said A. B.; and  
 whereas it appears to me, as well by the return of the said con-  
 stable to the said warrant of distress as otherwise, that the said

constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you the said constable of \_\_\_\_\_ to take the said A. B., and him safely to convey to the [house of correction] at \_\_\_\_\_ aforesaid, and there deliver him to the said keeper, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of \_\_\_\_\_, unless the said several sums, and all the costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], amounting to the further sum of \_\_\_\_\_, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L.S.)

(O. 1.)

*Warrant of Commitment upon a Conviction for a Penalty in the first instance.*

to wit. } To the constable of \_\_\_\_\_ and to the keeper of the  
[house of correction] at \_\_\_\_\_, in the said [county]  
of \_\_\_\_\_.

Whereas A. B., late of \_\_\_\_\_, [labourer], was on this day duly convicted before the undersigned, [one] of her majesty's justices of the peace in and for the said [county], for that [stating the offence as in the conviction]; and it was thereby adjudged that the said A. B., for his said offence should forfeit and pay the sum of \_\_\_\_\_, &c. [as in the conviction], and should pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was thereby further adjudged, that if the said several sums should not be paid [forthwith], the said A. B. should be imprisoned in the [house of correction] at \_\_\_\_\_, in the said [county], [and there kept to hard labour] for the space of \_\_\_\_\_, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] should be sooner paid; and whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of \_\_\_\_\_ to take the said

A. B., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of \_\_\_\_\_, unless the said several sums [and the costs and charges of conveying him to the said [house of correction], amounting to the further sum of \_\_\_\_\_], shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

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(O. 2.)

*Warrant of Commitment on an Order in the first instance.*

to wit. } To the constable of \_\_\_\_\_, and to the keeper of the  
           } [house of correction] at \_\_\_\_\_, in the said [county]  
           } of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past complaint was made before the undersigned, [one] of her majesty's justices of the peace in and for the said county of \_\_\_\_\_, for that &c., [as in the order], and afterwards, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the parties appeared before [me] the said justices [or as it may be in the order], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to pay to the said C. D. the sum of \_\_\_\_\_, on or before the \_\_\_\_\_ day of \_\_\_\_\_ then next, and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and I also thereby adjudged, that if the said several sums should not be paid on or before the \_\_\_\_\_ day of \_\_\_\_\_ then next, the said A. B. should be imprisoned in the [house of correction] at \_\_\_\_\_, in the said county, [and there kept to hard labour] for the space of \_\_\_\_\_, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] should be sooner paid; and whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of \_\_\_\_\_ to take the said A. B. and him safely convey to the said [house of correction] at \_\_\_\_\_ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the

said [house of correction], there to imprison him [and keep him to hard labour] for the space of , unless the said several sums [and the costs and charges of conveying him to the said house of correction, amounting to the further sum of ] shall be sooner paid unto you the said keeper: and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of ,  
in the year of our Lord , at , in the [county]  
aforesaid.

J. S. (L.s.)

(P. 1.)

*Warrant of Commitment on Conviction where the Punishment is by Imprisonment.*

To the constable of , and to the keeper of the  
[house of correction] at , in the said [county]  
to wit. } of .

Whereas A. B., late of , [labourer], was this day duly convicted before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of , for that [stating the offence as in the conviction], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the [house of correction] at , in the said county, [and there kept to hard labour] for the space of : These are therefore to command you the said constable of to take the said A. B., and him safely convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of ; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of ,  
in the year of our Lord , at , in the [county]  
aforesaid.

J. S. (L.s.)

(P. 2.)

*Warrant of Commitment on an Order where the disobeying of it is punishable by Imprisonment.*

To the constable of , and to the keeper of the  
[house of correction] at , in the said [county]  
to wit. } of .

Whereas on last past complaint was made before the

undersigned, [one] of her majesty's justices of the peace in and for the said county of \_\_\_\_\_, for that &c. [*as in the order*], and afterwards, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the said parties appeared before me [*or as it may be in the order*], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to &c. [*as in the order*], and that if, upon a copy of the minute of that order being duly served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he should neglect or refuse to obey the same, it was adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the [*house of correction*] at \_\_\_\_\_, in the said county, [*and there kept to hard labour*] for the space of \_\_\_\_\_ [*unless the said order should be sooner obeyed*]; and whereas it is now proved to me that after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but he then refused [*or neglected*] to obey the same, and hath not as yet obeyed the said order: These are therefore to command you, the said constable of \_\_\_\_\_, to take the said A. B., and him safely to convey to the [*house of correction*] at \_\_\_\_\_ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said [*house of correction*], to receive the said A. B. into your custody in the said [*house of correction*], there to imprison him [*and keep him to hard labour*] for the space of \_\_\_\_\_; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [*county*] aforesaid.

J. S. (L. S.)

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(P. 3.)

*Warrant of Distress for Costs upon a Conviction where the Offence is punishable by Imprisonment.*

to wit. } To the constable of \_\_\_\_\_, and all other peace officers in the said [*county*] of \_\_\_\_\_.

Whereas A. B. of \_\_\_\_\_, [*labourer*], was on \_\_\_\_\_ last past duly convicted before the undersigned, [one] of her majesty's justices of the peace in and for the said county, for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the [*house of correction*] at \_\_\_\_\_, in the said county, [*and there kept to hard labour*] for the space of \_\_\_\_\_; and it was also thereby adjudged that the said A. B. should pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was thereby

ordered that if the said sum of \_\_\_\_\_ for costs should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said A. B. [and it was adjudged that in default of sufficient distress in that behalf the said A. B. should be imprisoned in the said [*house of correction and there kept to hard labour*] for the space of \_\_\_\_\_ to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said [*house of correction*], should be sooner paid]; and whereas the said A. B. being so convicted as aforesaid, and being required to pay the said sum of \_\_\_\_\_ for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of \_\_\_\_\_ days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to \_\_\_\_\_, the clerk of the justices of the peace for the division of \_\_\_\_\_, in the said [*county*], that he may pay the same as by law directed, and may render the surplus (if any) on demand to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [*county*] aforesaid.

J. S. (L.S.)

(P. 4.)

*Warrant of Distress for Costs upon an Order where the disobeying of the Order is punishable with Imprisonment.*

                    } To the constable of \_\_\_\_\_, and to all other peace  
to wit. } officers in the said [*county*] of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past complaint was made before the undersigned, [*one*] of her majesty's justices of the peace in and for the said county of \_\_\_\_\_, for that [*&c., as in the order*], and afterwards, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the said parties appeared before me, as such justice as aforesaid [*or as it may be in the order*], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to [*&c. as in the order*]; and that if upon a copy of the minute of that order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual abode, he should neglect or

refuse to obey the same, I adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the [house of correction] at , in the said [county, and there kept to hard labour] for the space of [unless the said order should be sooner obeyed]; and I thereby also adjudged the said A. B. to pay to the said C. D. the sum of for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said A. B. [and in default of sufficient distress in that behalf I thereby adjudged that the said A. B. should be imprisoned in the said [house of correction, and there kept to hard labour] for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said [house of correction], should be sooner paid]; and whereas after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but the said A. B. did not then pay, nor hath he paid the said sum of for costs or any part thereof, but therein hath made default: These are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to , the clerk of the justices of the peace for the division of , in the said [county], that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.  
J. S. (L. S.)

(P. 5.)

*Warrant of Commitment for Want of Distress in either of the last Two Cases.*

to wit. } To the constable of and to the keeper of the  
          } [house of correction] at , in the said [county]  
          } of .

Whereas [ &c. as in the last two forms respectively, to the asterisk\* and then thus]; and whereas afterwards, on the day of in the year aforesaid, I the said J. S. issued a



warrant to the constable of                      commanding him to levy the said sum of                      for costs, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of                      to take the said A. B., and him safely to convey to the [house of correction] at                      aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said [house of correction], to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of                      unless the said sum, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction] amounting to the further sum of                      shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      , in the [county] aforesaid.  
J. S. (L. S.)

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(Q. 1.)

*Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.*

to wit. } To the constable of                      , and to all other peace officers in the said [county] of                      .

Whereas on                      last past information was laid [or complaint was made] before the undersigned [one] of her majesty's justices of the peace in and for the said [county], for that [&c., as in the order of dismissal]; and afterwards, to wit, on                      , at                      , both parties appearing before me in order that I should hear and determine the same, and the several proofs adduced to me in that behalf being by me duly heard and considered, and it manifestly appearing to me that the said information [or complaint] was not proved, I therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of                      for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said C. D.; [and I adjudged that in default of sufficient distress in that behalf the said C. D. should be

imprisoned in the [house of correction] at , in the said county [and there kept to hard labour], for the space of unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said [house of correction] should be sooner paid] (\*); and whereas the said C. D. being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said C. D.; and if, within the space of days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the justices of the peace for the division of , in the said [county], that he may pay and apply the same as by law directed, and may render the overplus (if any) on demand, to the said C. D., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this day of in the year of our Lord , at , in the [county] aforesaid.  
J. S. (L. S.)

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(Q. 2.)

*Warrant of Commitment for Want of Distress in the last Case.*

to wit. } To the constable , and to the keeper of the  
          } [house of correction] at , in the said [county]  
          } of .

Whereas [&c., as in the last form to the asterisk (\*), and then thus]: And whereas afterwards, on the day of , in the year aforesaid, I the said justice issued a warrant to the constable of , commanding him to levy the said sum of , for costs by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of to take the said C. D., and him safely convey to the [house of correction] at aforesaid, and there deliver him to the said

keeper thereof, together with this precept; and I hereby command you the said keeper of the said [house of correction] to receive the said C. D. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of , unless the said sum and all costs and charges of the said distress, [and of the commitment and conveying of the said C. D. to the said house of correction,] amounting to the further sum of , shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      , in the [county], aforesaid.

J. S. (L. S.)

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(R.)

*Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.*

Office of the clerk of the peace for the [county] of                      .  
(Title of the Appeal.)

I hereby certify that at a court of general quarter sessions of the peace holden at                      , in and for the said [county], on last past, an appeal by A. B. against a conviction [or order] of J. S., esquire, one of her majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of                      , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county, on or before the                      day of                      instant, to be by him handed over to the said [respondent]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order. Dated the                      day of                      , 1856.

G. H.

[Deputy] Clerk of the Peace.

(S. 1.)

*Warrant of Distress for Costs of an Appeal against a Conviction or Order.*

          } To the constable of \_\_\_\_\_, and to all other peace  
to wit. } officers in the said [county] of \_\_\_\_\_.

Whereas [ &c., as in the Warrants of Distress, N. 1, 2, ante, to the end of the statement of the conviction or order, and then thus ] : And whereas the said A. B. appealed to the court of general quarter sessions of the peace for the said county against the said conviction [ or order ], in which appeal the said A. B. was the appellant, and the said C. D. [ or J. S., esquire, the justice of the peace who made the said conviction or order ] was the respondent, and which said appeal came on to be tried, and was heard and determined, at the last general quarter sessions of the peace for the said county holden at \_\_\_\_\_, on \_\_\_\_\_, and the said court of general quarter sessions thereupon ordered that the said conviction [ or order ] should be confirmed [ or quashed ], and that the said [ appellant ] should pay to the said [ respondent ] the sum of \_\_\_\_\_, for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said [ county ], on or before the \_\_\_\_\_ day of \_\_\_\_\_, 1856, to be by him handed over to the said C. D.; and whereas the [ deputy ] clerk of the peace of the said [ county ] hath, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, duly certified that the said sum for costs had not then been paid : (\*) These are therefore to command you, in her majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of \_\_\_\_\_ days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to \_\_\_\_\_, the clerk of the justices of the peace for the division of \_\_\_\_\_, in the said [ county ], that he may pay and apply the same as by law directed, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [ county ] aforesaid.

J. N. (L.S.)

(S. 2.)

*Warrant of Commitment for Want of Distress in the last Case.*

to wit. } To the constable of \_\_\_\_\_, and to the keeper of the  
           } [house of correction] at \_\_\_\_\_, in the said [county]  
           } of \_\_\_\_\_.

Whereas [&c., as in the last form to the asterisk(\*), and then thus]: And whereas afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, I the undersigned issued a warrant to the constable of \_\_\_\_\_, commanding him to levy the said sum of \_\_\_\_\_

for costs by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of \_\_\_\_\_ to take the said A. B., and him safely to convey to the [house of correction] at \_\_\_\_\_ aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of \_\_\_\_\_, unless the said sum and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], amounting to the further sum of \_\_\_\_\_, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. N. (L.S.)

(T.)

*Account of Clerk of the Justices at Petty Sessions, and of the Keeper of the Gaol or House of Correction.*

Monthly return to her majesty's justices of the peace at the petty sessions of the peace for the division of \_\_\_\_\_, in the county of \_\_\_\_\_, assembled on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, of fines, penalties and sums of money received by the clerk of the said court [or "by the keeper of the gaol" or "house of correction" at \_\_\_\_\_], and how applied, from the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Name of Party convicted.	Date.	Offence.	Costs.	Amount thereof paid.	Fine.	Amount thereof paid.	Amount of Fine received for County Rate.	Amount of Fine otherwise applied.	Punishment when Fine not paid.	Names of convicting Magistrates.	Reasons of Nonpayment, or other Observations.

(Signed)

Clerk to the said Court, or Keeper of the above Gaol or House of Correction.

## 2. FORMS OF CONVICTIONS ALPHABETICALLY ARRANGED.

**NOTE.**—The following precedents contain merely the statements of the offences; the formal parts may be supplied from the general forms under 11 & 12 Vict. c. 43, which, it will be remembered, apply to all statutes not containing any particular form of conviction, and to statutes *previously* passed, whether they contain forms of conviction or not (s. 17, *ante*, p. 59).

## ADULTERATED FOOD.

(23 &amp; 24 Vict. c. 84.)

## ALEHOUSE KEEPER.

(9 Geo. 4, c. 61.) (a)

Did sell, by retail, porter, to wit, four quarts of porter,) the same being an excisable liquor, to be drunk and consumed in

(a) This statute is not exempt from the operation of 11 & 12 Vict. c. 43, as being a statute relating to the excise (s. 35), although the statutes regulating the sale of beer and cyder in *beer houses* and *shops* (11 Geo. 4 & 1 Will. 4, c. 64, 4 & 5 Will. 4, c. 85, and 3 & 4 Vict. c. 61, *post*, "beer") come under that denomination, and are therefore excepted from the stat. 11 & 12 Vict. c. 43, if the proceeding be on a section which relates to the revenue of excise, not otherwise, see *R. v. Bakewell*, 7 El. & Bl. 848; 26 L. J., M. C. 150; *ante*, p. 60. The distinction is this:—The last-mentioned statutes apply to such persons who take out an *excise* licence for the sale of beer and cyder only by retail, or in other words, they extend to *retail beer-houses* as distinguished from *inns* or *public-houses*. The keeper of a retail beer-house does not require a magistrate's licence under 9 Geo. 4, c. 61, but is authorized to sell beer and cyder (which include ale, porter and perry) by retail, on taking out an excise licence. But by stat. 9 Geo. 4, c. 61, the keeper of a *common inn*, *ale-house* or *victualing house* requires a magistrate's

licence, and may also under the provisions of that statute procure a licence to sell beer and cyder as well as wine and spirits by retail, without taking out a licence for that purpose under the excise acts above referred to. See 1 Burn's Justice, tit. "Ale-house," pp. 60, 82 (29th edit.); *R. v. Wilkinson*, 10 L. T., N. S. 370. False certificate of character for obtaining licence, 4 & 5 Will. 4, c. 85, s. 2; *Leader v. Yell*, 32 L. J., M. C. 231. What are excisable liquors, under 9 Geo. 4, c. 61, s. 18, see *Lancashire v. JJ. Staffordsh.*, 26 L. J., M. C. 171. Allowing gaming in the house, *Patten v. Rhymer*, 29 L. J., M. C. 189; *R. v. Ashton*, 22 L. J., 1 E. & B. 286; see also *Foot v. Baker*, 6 Scott, N. R. 301. Refusing to admit a police officer, *R. v. Tott*, 30 L. J., M. C. 177. "Travellers" under 18 & 19 Vict. c. 118, s. 2, *Taylor v. Humphreys*, 10 C. B., N. S. 429; 30 L. J., M. C. 242; *Atkinson v. Sellers*, 5 C. B., N. S. 412; 28 L. J., M. C. 12; under 2 & 3 Vict. c. 47, s. 42, *Fisher v. Howard*, 5 N. R. 118; under 11 & 12 Vict. c. 49, s. 1, *Taylor v. Humphries*, 34 L. J., M. C. 1. Selling beer in church hours, *R. v. Whiteley*, 3 H.

his house, situate in the parish aforesaid, in the county aforesaid, without being duly licensed so to do, contrary &c.

[This conviction is framed on sect. 18, by which "every person who shall sell, barter, exchange or for valuable consideration otherwise dispose of any excisable liquor by retail, to be drunk or consumed in his house or premises, or shall permit or suffer" the same to be done, "without being duly licensed so to do;" "and every person, being duly licensed, who shall sell, barter, &c., to be drunk or consumed in his house or premises, not being the house or premises specified in such licence," incurs a penalty not exceeding 20*l.* nor less than 5*l.*, together with the costs of the conviction. Sects. 25, 26, penalties how to be recovered and applied (*a*). No time is limited by the act for prosecuting offences, and therefore the information must be laid within six calendar months from the time when the matter of it arose (11 & 12 Vict. c. 43, s. 11). The conviction may be before one justice, sect. 18 of 9 Geo. 4, c. 61.]

& N. 143; 27 L. J., M. C. 217; commented upon in *Harris v. Jenns*, 9 C. B., N. S. 152; 30 L. J., M. C. 183. The stat. 11 & 12 Vict. c. 49, which regulates the hours for closing beer-houses, &c., during Sunday morning is not repealed by 17 & 18 Vict. c. 79, and 18 & 19 Vict. c. 118, which apply only to Sunday afternoon, *Harris v. Jenns*, *supra*; but the last-mentioned statute, by which ale-houses are required to be closed between three and five on Sundays, operates as a repeal of so much of 9 Geo. 4, c. 61, as prohibits their opening during the usual hours of afternoon divine service, *Whiteley v. Heaton*, 3 H. & N. 143, *supra*. See form of conviction for keeping ale-houses open during church hours, contrary to licence, under 9 Geo. 4, c. 61; *R. v. Knapp*, 2 El. & Bl. 447; 22 L. J., M. C. 139; see also *R. v. Shaw*, 34 L. J., M. C. 169, and *post*, "Sunday." As to closing public and refreshment houses in the City of London, &c., see 27 & 28 Vict. c. 64; whereby public and refreshment houses within limits of metropolitan police district, the City of London, and such corporate boroughs and districts of improvement commissioners as adopt the act are to be closed between the hours of one and four in the morning, under a penalty not exceeding 5*l.* The 7th section provides for the granting of occasional dispensations from the provisions of the act by the local authority on special

occasions; and by 28 & 29 Vict. c. 77, the licensing justices, at the time of granting or renewing a licence, on the production of such evidence as they shall deem sufficient to show that it is desirable for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, may grant to any licensed victualler, or keeper of a refreshment house in the immediate neighbourhood of the market, or of the place where the persons follow such lawful trade, a licence exempting him from the provisions of 27 & 28 Vict. c. 64, between the hours of two and four o'clock in the morning, or any part of such hours, during such times as shall be specified in such licence.

(*a*) By s. 26 the justice may award if he thinks fit any portion of the penalty, not exceeding one-half, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall act. Where the penalty was imposed by justices for a borough, which had a commission of the peace but no Court of Quarter Sessions, it was held to be payable to the treasurer of the county in which the borough was situate, and not to the treasurer of the borough on account of the borough fund. *R. v. Dale*, 17 Jur. 47; 22 L. J., M. C. 44; see *Brown v. Nicholson*, 22 L. J., M. C. 49.



*Conviction under the same Statute, s. 21, for allowing Drunkenness and Disorder in the Alehouse.*

For that he the said C. D. being a person duly licensed to sell by retail excisable liquors in his house and premises, did, whilst he was such licensed person, and whilst he was subject to the conditions (a) under which such licence was granted to him, to wit, on the            day of           , in the year aforesaid, at the parish and [county] aforesaid, wilfully and knowingly permit and suffer drunkenness and disorder in his said house, against the tenor of his said licence, by permitting one J. B. (a) and other persons to be then and there served with liquor, and to become then and there in a state of intoxication and drunkenness, against the tenor of the licence so granted to the said C. D. as aforesaid, and contrary to the form of the statute in such case made and provided; and we adjudge the said C. D. for his said offence, this being adjudged to be the first offence against the provisions of the act passed in the ninth year of the reign of King George the Fourth to regulate the granting of licences to keepers of inns, alehouses and victualling-houses in England, to forfeit and pay, &c.

[This conviction is framed under the 9 Geo. 4, c. 61, s. 21, which inflicts a penalty not exceeding 5*l.* for the first offence, together with the costs of the conviction; not exceeding 10*l.* for a second offence, and not exceeding 50*l.* for a third offence, in which last case the matter must be inquired into at a special sessions, or the general annual licensing meeting. But if the justices think fit, or the defendant requires it, the charge is to be adjourned (if at his request, on his entering into a proper recognizance) to the next quarter sessions, there to be inquired of by a jury; and if he is then found guilty, the court may either inflict upon him a penalty not exceeding 100*l.*, or adjudge his licence to be forfeited, or inflict both such penalty and forfeiture at their discretion.

By sect. 27 there is an appeal to the sessions (b), but by sect. 34 there is no *certiorari*. The conviction must be before two justices (sect. 21).]

(a) A conviction of a publican, under 11 Geo. 4 & 1 Will. 4, c. 64, s. 13, for allowing disorderly conduct in his house, contrary to the tenor of his licence, not stating the terms of the licence, nor naming the parties who were permitted to misbehave, is not too vague, *Wray v. Toke*, 12 Q. B. 492; and see *Cole v. Coulton*, 2 El. & El. 695; 29 L. J., M. C. 125. As to stating that the beer-house was within the division for which the justices were acting, see *ante*, p. 36, n. (m), and *R. v. Shaw*, 34 L. J., M. C. 169.

(b) The notice of appeal must be served on both the justices; *R. v. JJ. Chesh.*, 11 A. & E. 139. The notice will now be fourteen days, 12 & 13 Vict. c. 45, s. 1. As to adjourning appeal, see *R. v. Belton*, 17 L. J., M. C. 70. As to appeal from a refusal to grant an ale-house licence, see *R. v. Recorder of Bristol*, 4 El. & Bl. 265; 1 Jur., N. S. 373; 24 L. J., M. C. 43, S. C.; *R. v. JJ. Ely*, 5 El. & Bl. 489; 1 Jur., N. S. 1017; 21 L. J., M. C. 1; and see *ante*, p. 342, n. (g).

*Conviction where the Defendant has been twice convicted.*

to wit. } Be it remembered, that at a special sessions for the  
 division of , in the said [county], holden on  
 the day of , in the year of our Lord , at  
 in the said [county], before the undersigned, two of her majesty's  
 justices of the peace acting in and for the said division, in pur-  
 suance of an act of parliament made and passed in the ninth  
 year of the reign of King George the Fourth, intituled "An Act  
 to regulate the granting of Licences to Keepers of Inns, Ale-  
 houses and Victualling-houses in England," C. D. of the parish  
 of , within the said division, is convicted before the under-  
 signed, two of her majesty's justices of the peace as aforesaid,  
 for that [stating the offence as in the last conviction], and we  
 adjudge the said C. D. for his said offence, this being adjudged  
 to be his third offence against the provisions, &c. [as in the last  
 conviction], to forfeit, &c. (a).

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 ANIMALS.

(See "CRUELTY," "DOGS.") (b)

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 APPRENTICE.

1. *Conviction of an Apprentice, under 20 Geo. 2, c. 19, s. 4, for Misbehaviour.*

Then being an apprentice to the said C. D. in his trade of a  
 , upon whose binding out no premium [or no larger sum

(a) See 9 Geo. 4, c. 61, ss. 21, 22, 25. Stat. 2 & 3 Vict. c. 93, s. 16, prohibits the harbouring of county police while they are on duty; and 18 & 19 Vict. c. 11, s. 79, relates to the billeting of soldiers at public houses. See *post*, "Beer," and "Sunday."

(b) As to the jurisdiction of justices over the offence of stealing animals, see 24 & 25 Vict. 96, s. 21 et seq., and the late case of *Taylor v. Newman*, 4 B. & S. 89; 32 L. J., M. C. 186 (conviction under sect. 23 for killing pigeons). By sect. 41, whoever shall unlawfully and maliciously kill, maim or wound any dog, bird, beast or other animal, not being cattle, but being either the subject of larceny at common law, or being ordi-

narily kept in a state of confinement or for any domestic purpose, shall on conviction thereof before a justice, at his discretion, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay over and above the amount of injury done, such sum of money not exceeding 20*l.* as to the justice shall seem meet [or the justice may on a first conviction discharge the offender on his making satisfaction to the party aggrieved, sect. 66]; and for a second offence the offender may be imprisoned for a term not exceeding 12 months. Prevention of diseases among animals, 21 & 22 Vict. c. 62.

than twenty-five pounds, but only the sum of £                   ] was paid, and being then and there employed as such apprentice, at the said parish of                   , in the said county of                   , was then and there in the service of his said apprenticeship guilty of a certain misdemeanor [or miscarriage or certain ill-behaviour] by then and there refusing to work [or disobeying the lawful commands of the said C. D., his master (*setting out the particular work or command*), or by then and there absconding from the said C. D.'s service without his consent and without just cause], contrary, &c. (a).

2. *Of a Master, under 33 Geo. 3, c. 55, for Illusage of his Apprentice.*

Misuse and illtreat the said C. D. by then and there turning the said C. D. out of his house without just cause, and refusing to receive him again when thereunto requested, he the said C. D. being then and there an apprentice to the said A. B. in his trade of a                   , and being then and there employed as such apprentice, no premium [or no larger sum than the sum of 25*l.* to wit the sum of                   pounds only] having been paid upon his binding out as such apprentice, contrary, &c. (b).

ARSENIC.

*Conviction under 14 & 15 Vict. c. 13, s. 1, for selling Arsenic without entering the Particulars of the Sale in a Book in the Form given by the Schedule to the Act.*

That the said A. B., on &c., at the parish aforesaid, in the county aforesaid, did sell and deliver to one C. D. a certain quantity, to wit, one ounce of arsenic, without having entered or caused to be entered in any book or books, in the form set forth in the schedule to the statute passed in the fourteenth year of the reign of her majesty queen Victoria, intituled "An Act to

(a) 20 Geo. 2, c. 19, s. 4; 4 Geo. 4, c. 29, s. 1, explained and extended by 4 Geo. 4, c. 34, s. 1; 5 Vict. c. 7; 7 & 8 Vict. c. 101, ss. 12, 13; 14 & 15 Vict. c. 11; see *Finley v. Jawle*, 12 East, 248; *Gray v. Cookson*, 16 *Id.* 13; *Cooper v. Simon*, 7 H. & N. 707; 31 L. J., M. C. 138; and *post*, "Master and Servant;" and also 26 L. J., M. C. 155, 193. By stat. 20 Geo. 2, c. 19, s. 4, the magistrates may at once commit

an apprentice to prison for misbehaviour without convicting him; *ante*, p. 165.

(b) See 4 Geo. 4, c. 29; and 5 & 6 Vict. c. 7. As to the allowance by justices of indentures of parish apprentices, see *Overseers of Staverton v. Overseers of Ashburton*, 4 El. & Bl. 526; 1 Jur., N. S. 233; 24 L. J., M. C. 53; *R. v. St. George, Bloomsbury*, 4 El. & Bl. 520; 1 Jur., N. S. 231; 24 L. J., M. C. 49; *ante*, p. 19.

regulate the Sale of Arsenic," or to the like effect, a statement of the said sale of the said arsenic, with the quantity of arsenic so sold as aforesaid, or the purpose for which the said arsenic was required or was stated to be required, or the day of the month and year of the said sale, or the name, place of abode or condition or occupation of the said C. D., so being the purchaser of the said arsenic as aforesaid, although the said arsenic so sold as aforesaid did not form part of the ingredients of any medicine required to be made up or compounded according to the prescription of a legally qualified medical practitioner or a member of the medical profession, and although the said sale of the said arsenic was not a sale by a wholesale dealer to a retail dealer upon any order in writing in the ordinary course of wholesale dealing, contrary, &c.

[The stat. 14 & 15 Vict. c. 13, s. 1, requires particulars of the sale of arsenic to be entered in a book by the seller in the form set forth in the schedule to the act; s. 2, restricts the sale to persons of full age, known or identified to the seller; by s. 3, arsenic, before it is sold, is to be mixed with soot or indigo, but if the purchaser states it to be required not for use in agriculture, but for some other purpose, for which such admixture would, according to his representation, render it unfit, it may be sold without such admixture in a quantity of not less than ten pounds at any one time; s. 4, imposes a penalty, not exceeding 20*l.*, upon conviction by two justices; by s. 5, the act is not to extend to the sale of arsenic in medicine under a medical prescription, or to the sale by wholesale to retail dealers upon orders, in writing, in the ordinary course of wholesale dealing; by s. 6, "arsenic" is to include arsenious compounds.]

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## ASSAULT.

### 1. *Conviction under 24 & 25 Vict. c. 100, s. 42, for a Common Assault or Battery (a).*

Unlawfully assault and beat [or assault] one C. D., of, &c., contrary, &c.

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### 2. *Under 24 & 25 Vict. c. 100, s. 43, for an Aggravated Assault upon a Woman.*

Unlawfully assault one C. D., of, &c., a female [or a male child under the age of fourteen years, to wit, of the age of years] contrary to the statute in such case made and pro-

(a) Upon an application for sureties to keep the peace, the justices convicted the defendant of an assault, although the complainant

himself protested against the conviction. A *certiorari* was granted to quash it, *ante*, p. 66.

vided, and the said assault being of such an aggravated nature, that it cannot in our opinion be sufficiently punished under the provisions of the statute passed in the twenty-fifth year of the reign of Her Majesty Queen Victoria, intituled "An Act to Consolidate and Amend the Statute Law of England and Ireland relating to Offences against the Person," we do adjudge the said A. B. for his said offence to be imprisoned in the house of correction at \_\_\_\_\_, in the said county, and there kept to hard labour for the space of six calendar months, &c.

[Sect. 43 (together with sect. 76) empowers two justices sitting at the place where petty sessions are usually held, or a metropolitan police magistrate or a stipendiary magistrate, to punish with imprisonment and hard labour for six calendar months aggravated assaults on any male child whose age does not in their opinion exceed fourteen years, or on any female; or they may impose a fine, not exceeding (with costs) the sum of 20*l*. The offender may also be bound to keep the peace and be of good behaviour for any period not exceeding six calendar months from the expiration of his sentence. The conviction is a bar to all other proceedings for the same assault.

Sect. 44. If the justices upon the hearing of any such case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved under either of the last two preceding sections, shall deem the offence not to be proved or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver the certificate to the party against whom the complaint was preferred.

Sect. 45. If any person against whom any such complaint as in either of the last three preceding sections mentioned shall have been preferred by or on behalf of the party aggrieved shall have obtained such certificate, or having been convicted shall have paid the whole amount adjudged to be paid or shall have suffered the imprisonment or imprisonment with hard labour awarded in every such case, he shall be released from all further or other proceedings civil or criminal for the same cause.

Sect. 46. Provided that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same: Provided also, that nothing herein contained shall authorize any justice to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements or hereditaments or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice.

There is no appeal; the writ of *certiorari* is taken away. The forms given by 11 & 12 Vict. c. 43, may be adopted; ss. 72, 76; *Ex parte Allison*, 10 Exch. 561.

See *post*, "Shipping," as to assaults committed on board a ship.]



## BAKER. (a)

*Conviction under the 6 & 7 Will. 4, c. 37, s. 12, of a Baker for having Alum on his Premises.*

For that he, the said A. B., &c., on, &c., at &c., had in the house of him the said A. B., there situate, twelve pounds weight of alum, he the said A. B. being then and there a baker out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange; which said alum was then and there found in the said house of him the said A. B., so being such baker as aforesaid, and, after due examination thereof, is adjudged by me the said justice to have been deposited there for the purpose of being used in adulterating flour and bread, against the form of the statute in such case made and provided. And I, the said justice, do adjudge him, the said A. B., to pay and forfeit for the same the sum of 10*l*.

[A general form of conviction is given by sect 23. No *certiorari* (sect. 24), but an appeal to the sessions (sect. 25).]

## BASTARDS.

(See the Schedule of Forms to 8 & 9 Vict. c. 10(b)).

## BATHS AND WASH-HOUSES.

(9 & 10 Vict. c. 74, s. 40, and 10 & 11 Vict. c. 61.)

(a) See 26 & 27 Vict. c. 40, for the regulation of bakehouses and limitation of the hours of labour of young persons employed therein. The penalties under this act are to be recovered before two justices of the peace and according to 11 & 12 Vict. c. 43 (ss. 8 and 9). A baker, who exercises his calling on Sunday, incurs only one penalty; *Crepps v. Durden*, Cowp. 640; 1 Smith's L. C. 378; and see *ante*, p. 260.

(b) The words in form 8, "and also having heard all the evidence tendered by the said" (the putative father), are properly omitted, where no evidence is offered by him, and the order need not in such case state that he offered no evidence; *R. v.*

*Pearcy*, 17 Q. B. 902; 21 L. J., M. C. 129, S. C. "Residence," for purpose of applying for order, *R. v. Hughes*, 26 L. J., M. C. 133. Time of application for summons, *Potts v. Cambridge*, 27 *Id.* 62. Serving summons amending order, *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. See as to notice of appeal, *ante*, pp. 348, 350; recognizance, p. 356, n. (a); enforcing order notwithstanding appeal, p. 345; effect of 11 & 12 Vict. c. 43, upon bastardy orders, p. 60; effect of 12 & 13 Vict. c. 45 upon, p. 348; and as to form of such orders, p. 60, n. (m); and of commitment upon, p. 331. Time of application for *certiorari*, *Re Davis*, 17 Jur. 577.

## BEER-HOUSES.

1. *Conviction under 11 Geo. 4 & 1 Will. 4, c. 64, s. 13, for mixing Drugs in Beer sold on the Premises.*

Being then and there a seller of beer by retail, having a licence under the provisions of an act passed in the first year of the reign of King William the Fourth, intituled "An Act to permit the general Sale of Beer and Cyder by Retail in England," on, &c., at, &c., did \* mix a certain drug, to wit, , in and with certain beer, and did afterward, on &c., in the house and premises situate at aforesaid, and licensed and specified in and by such licence, unlawfully and knowingly sell to one C. D. a certain quantity, to wit, one quart, of the said beer, being mixed with the said drug as aforesaid, contrary to the form of the statute in such case made and provided (a).

2. *Under Section 12, for not using Standard Measure.*

As in preceding form to \*, sell to one C. D., by retail, a certain quantity of beer, being a quantity not less than half a pint, to wit, one gallon, in a gallon measure and vessel, not sized according to the legal standard, but on the contrary thereof less, to wit, one pint less than the legal standard, contrary, &c.

3. *Under 3 & 4 Vict. c. 61, s. 15, for keeping Beer-house open after Eleven o'clock at Night, within the Bills of Mortality.*

As in the first form, *supra*, to \*, have and keep open for the sale of beer by retail his said house and premises so licensed

(a) See 4 & 5 Will. 4, c. 85; 10 Vict. c. 5; 11 & 12 Vict. 49. In describing the place of committing the offence, state it to have been within the division of —, *ante*, pp. 37, n. (p), 38, n. (t); *Ex parte Allison*, 10 Exch. 561. The statutes relating to beer-houses treat the penalties thereby imposed as excise penalties; convictions under them are therefore excepted from the operation of 11 & 12 Vict. c. 43, if they proceed on sections relating to the revenue of excise, *ante*, p. 579, n. (a). A conviction for selling beer to be drunk on the premises contrary to licence under 4 & 5 Will. 4, c. 85, s. 17, does not involve a for-

feiture of the licence; *Cross v. Watts*, 13 C. B., N. S. 239; 32 L. J., M. C. 73; and see *Read v. Storey*, 30 *Id.* 110. A conviction under sect. 13 of 11 Geo. 4 & 1 Will. 4, c. 64, for permitting drunkenness on the premises, need not state the names of the persons permitted to be drunk, or allege that they are unknown, *ante*, p. 580, n. (b). The 12th section of 25 & 26 Vict. c. 22, repeals sect. 29 of 11 Geo. 4 & 1 Will. 4, c. 64, and takes away any right that may previously have existed to sell beer by retail at fairs without a licence, *Huzham v. Wheeler*, 33 *Id.* 153; see *post*, "Refreshment."

as aforesaid, after the hour of eleven of the clock at night, to wit, at of the clock at night, the said parish and the said house and premises not being within the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth or Southwark, as defined by the statute in that behalf, but being within the bills of mortality, against, &c. (a).

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### BETTING-HOUSES. (See GAMING.)

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### BOROUGH. (See MUNICIPAL CORPORATION ACT, AND BYE-LAWS.)

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### BRICKS AND TILES.

*Conviction under 17 Geo. 3, c. 42, for making Bricks of improper Size.*

Did make for sale ten thousand bricks, which were less than eight inches and a half long [or two inches and a half thick, or four inches wide], to wit, eight inches long [or two inches thick or three inches wide] only, contrary, &c. (b).

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### BRIDGES (COUNTY) (c).

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### BUILDING ACT (METROPOLITAN) (d). (See 18 & 19 Vict. c. 122.)

(a) In a conviction (under 11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85) for keeping a beer-house open at times prohibited by the order of justices, it is not sufficient to allege that it was open "at a time declared to be unlawful by an order of the justices," but it should aver that the justices made such an order, and state the particular time at which the house was so kept open; *Newman v. Lord Hardwicke*, 8 A. & E. 124; and see *Newman v. Bendyshe*, 10 A. & E. 11; 2 P. & D. 340, S. C.; *R. v. Charlesworth*, 20 L. J., M. C. 181. See also *R. v. Waghorn*, 1 El. & Bl.

647, for fraudulently obtaining a licence under 11 Geo. 4 & 1 Will. 4, c. 64; and *Lockwood v. Attorney-General*, 10 M. & W. 464, for having in possession articles to be used as substitutes for malt and hops. See 26 & 27 Vict. c. 33, and *ante*, "Ale-house," and *post*, "Sunday."

(b) 17 Geo. 3, c. 42, ss. 1, 2; and see 17 Edw. 4, c. 4.

(c) See *Re Newport Bridge Co.*, 29 L. J., M. C. 52.

(d) See 23 & 24 Vict. c. 52; *Ex parte Overseers of Saffron Hill*, 18 Jur. 1104; 24 L. J., M. C. 56, S. C.; *R. v. Combe*, 13 Q. B. 179; *R. v. Ingham*,



## BUILDING SOCIETY (a). (See FRIENDLY SOCIETY.)

## BURIAL.

(See 16 & 17 Vict. c. 134 (b); 18 & 19 Vict. c. 79; and 27 & 28 Vict. c. 97.)

## BURNING BY SERVANTS.

*Conviction under 14 Geo. 3, c. 78, s. 84, for negligently setting Fire to a Dwelling-house.*

Then being servant to one C. D., did through negligence [or carelessness] fire [or cause to be fired] a certain dwelling-house [or outhouse or building] there situate, in the occupation of the said C. D., her master, contrary, &c. (c).

## BYE-LAWS (d).

*Conviction under 6 & 7 Will. 4, c. 76, s. 90, for offending against a Bye-law of a Borough.*

Did unlawfully suspend an article of dress, to wit, a shirt, over the causeway of a certain street there called High-street, for the purpose of then and there drying the same, contrary to the bye-law of and for the said borough in that behalf duly made at a meeting of the council of the said borough, held on the day of \_\_\_\_\_, 18\_\_\_\_, and which said bye-law was at the time of the commission of the said offence, and still is, in force for the said borough, and contrary to the form of the statute in such case made and provided (e).

17 *Id.* 884; 21 L. J. 125, S. C.; *R. v. Carruthers*, 33 L. J., M. C. 107; *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81; *North Kent Railway Co. v. Badger*, 27 *Id.* 106; *Evelyn v. Whichcord*, 1 El., Bl. & El. 126; 27 L. J., M. C. 211; *Labalmondiere v. Frost*, 1 El. & El. 527; 28 L. J., M. C. 155.

(a) See *R. v. Trafford*, 4 El. & Bl. 122; 24 L. J., M. C. 20, S. C.;

*Hughes v. Layton*, 33 L. J., M. C. 89.

(b) *R. v. JJ. Manchester*, 5 El. & Bl. 702; 25 L. J., M. C. 45.

(c) 6 Anne, c. 31; 14 Geo. 3, c. 78, s. 84; 7 & 8 Vict. c. 84, Sched. (A.)

(d) See "Railway," *post*.

(e) See 6 & 7 Will. 4, c. 76, s. 91, and *post*, "Health (Public)," "Railways," "Waterman;" under Local Government Act, 1858, see *Young*

## CENSUS.

(23 &amp; 24 Vict. c. 61, ss. 16—18.)

## CHIMNEY SWEEPERS.

*Conviction under 3 & 4 Vict. c. 85, s. 2, for allowing a Person under the Age of Twenty-one to ascend, &c., a Chimney for the purpose of Sweeping (a).*

Did compel [or knowingly allow] one C. D., then being a person under the age of twenty-one years, to wit, of the age of ten years, to ascend [or descend] a certain chimney in the house of one E. F., there situate, for the purpose of then and there sweeping [or cleaning or coring] the same [or extinguishing fire therein], contrary, &c.

## CHURCH RATES.

(See 53 Geo. 3, c. 127, and 1 Burn's Justice, tit. "Church or Chapel.") (b)

## CINQUE PORTS. (See 18 &amp; 19 Vict. c. 48, ss. 3, 4.)

## COAL MINES.

(See 18 & 19 Vict. c. 108, ss. 11—15(c); 13 & 14 Vict. c. 100, s. 7.)

v. *Edwards*, 33 L. J., M. C. 227; bye-law when divisible. *R. v. Lundie*, 31 L. J., M. C. 157; *Bennett v. The Blackpool Board of Health*, 4 H. & N. 127; 28 L. J., M. C. 203; *Re Fishermen of Faversham*, 8 T. R. 352, qualifying the rule, laid down in Com. Dig. tit. "Bye-law" (C. 7).

(a) See 27 & 28 Vict. c. 37.

(b) See *ante*, pp. 143, 144; *R. v. Bidwell*, 17 L. J., M. C. 99; *R. v. Byron*, *Id.* 134; *R. v. St. Clements*, 12 A. & E. 177; *R. v. Thorogood*, *Id.* 183; *R. v. Williams*, 19 L. J.,

M. C. 126; *R. v. Nunneley*, E. B. & E. 852; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121. Brawling in church, 23 Vict. c. 32.

(c) Conviction for not giving notice to inspector under sect. 9, *Underhill v. Longridge*, 29 L. J., M. C. 65; for not ventilating mine under sect. 4, *Knowles v. Dickenson*, 2 El. & El. 705; 29 L. J., M. C. 135; limitation of time for the recovery of penalties, sect. 14, *R. v. Mainwaring*, El., Bl. & El. 474; 27 L. J., M. C. 278.

## COALS.

*Conviction under 5 & 6 Will. 4, c. 63, s. 9, for selling Coals by Measure.*

Did unlawfully sell to one C. D. certain coals [or slack, culm, or cannel], to wit, one bushel of coals by measure and not by weight, contrary, &c. (a).

## COINAGE (b).

(24 & 25 Vict. c. 99, ss. 23, 26, 27, 32, 33 and 41.)

## COMBINATION.

1. *Conviction under 6 Geo. 4, c. 129, s. 3, for forcing a Workman to leave Work, &c. (c).*

Did by violence to the person [or property] of C. D., of, &c., by then and there [describe the violence, or by threats or intimidation], that is to say, by [here state the particulars], [or did by molesting or obstructing the said C. D.] \* force [or endeavour to force] the said C. D., who was then and there hired and employed as a warehouseman [journeyman, manufacturer, workman or other person] by one E. F., in the trade of a , [describe the trade], to depart from his said hiring and employment, contrary, &c.

2. *Conviction under same Section for forcing a Master to alter his mode of Trade.*

*Proceed to \* in preceding form, force [or endeavour to force] the said C. D., who then and there carried on the trade and*

(a) See "Weights and Measures," *post*; and as to the weighing of coals within twenty-five miles of London, see 1 & 2 Will. 4, c. lxxvi; 1 & 2 Vict. c. 101; 8 & 9 Vict. c. 101; 14 & 15 Vict. c. 146; and 24 & 25 Vict. c. 42; see also *Cundell v. Dawson*, 4 C. B. 376, and *Frend v. Butterfield*, 11 A. & E. 838.

(b) By 24 & 25 Vict. c. 99, s. 17, whoever shall tender, utter, or put off any coin defaced, by stamping thereon any names or words, shall on conviction before two justices forfeit a sum not exceeding 40s., but

the penalty cannot be proceeded for without the consent of the attorney-general.

(c) See *R. v. Rowlands and others*, 17 Q. B. 671; 21 L. J., M. C. 81, S. C.; see also *Hilton v. Eckersley*, 1 Jur. N. S. 874; 24 L. J., Q. B. 353; *S. C. in error*, 6 El. & Bl. 47; 2 Jur., N. S. 587; *Walsby v. Anley*, 30 L. J., M. C. 121; *Ex parte Perham*, 2 El. & El. 383; 29 L. J., M. C. 31, 33; *O'Neil v. Longman*, 4 B. & S. 376; 32 L. J., M. C. 259; and *O'Neil v. Kruger*, 4 B. & S. 389.

business of a , to limit the number of his apprentices to two, contrary, &c.

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3. *Conviction under 39 Geo. 3, c. 79, ss. 2 and 8, for an unlawful Combination and Confederacy.*

Did, contrary to an act of parliament made and passed in the thirty-ninth year of the reign of King George the Third, intituled "An Act for the more effectual Suppression of Societies established for Seditious and Treasonable Purposes, and for better preventing Treasonable and Seditious Practices," become a member of a certain society [*describing it*], which society is an unlawful combination and confederacy within the intent and meaning of the said act (a).

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COMMONS.

*Conviction under 38 Geo. 3, c. 65, s. 1, for turning out Scabbed Sheep on.*

Did turn out [*or keep or depasture*] divers, to wit, five sheep and five lambs upon a certain common [*waste land or forest, chase, wood, moor, marsh, heath, &c.*] there called , the said several sheep and lambs being then and there infected with a certain disorder called scab [*or mange*], contrary, &c.

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CONSTABLES.

*Conviction under 5 & 6 Vict. c. 109, s. 13, of a Parochial Constable for refusing to act.*

Then being duly appointed and sworn as a constable for the said parish of , by virtue of the statute in that behalf, did then and there refuse [*or wilfully neglect*] to act in the execution of his said office, to wit [*describe the neglect*], contrary, &c. (b).

(a) See 2 Vict. c. 12, and *Reg. v. Johnson*, 8 Q. B. 102.

(b) See *R. v. North Bierley*, El. Bl. & El. 519; 27 L. J., M. C. 275; county constables, 2 & 3 Vict. c. 93; borough constables, 5 & 6 Will.

4, c. 76; special constables, 1 & 2 Will. 4, c. 41; constables on rivers, canals, &c., 3 & 4 Vict. c. 50; under the Lighting and Watching Act, 3 & 4 Will. 4, c. 90.

## COPYRIGHT OF DESIGNS.

*Conviction under 6 & 7 Vict. c. 65, s. 4, for selling an Article as Registered when it was not so.*

Did unlawfully sell to one C. D. as a registered article a certain article of manufacture, to wit, a stove, then having the word "registered" put thereon, the same not being then registered either according to the provisions of an act of parliament passed in the sixth year of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," or according to the provisions of another act of parliament passed in the seventh year of the reign of her present Majesty, intituled "An Act to amend the Laws relating to the Copyright of Designs," or according to the provisions of another act of parliament passed in the fourteenth year of the reign of her present Majesty, intituled "An Act to extend and amend the Acts relating to the Copyright of Designs," as he the said A. B. at the time when he sold the same well knew, contrary, &c. (a).

## COUNTY COURTS.

*Conviction under 9 & 10 Vict. c. 95, s. 114, for assaulting an Officer of.*

Did unlawfully assault C. D., he being then an officer [or bailiff] of the county court of Gloucestershire, holden at Gloucester, under an act passed in the tenth year of the reign of her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," and being then and there in the due execution of his duty as such officer [or bailiff] as aforesaid, contrary, &c. (b).

## CRUELTY TO ANIMALS.

1. *Conviction under 12 & 13 Vict. c. 92, s. 2, for cruelly beating a Horse (c).*

Did cruelly beat a certain animal, to wit, a horse, by then and

(a) See 5 & 6 Vict. c. 100, ss. 7, 8, and 13 & 14 Vict. c. 104; *R. v. Bessell*, 20 L. J., M. C. 177; *Bessell v. Wilson*, 1 El. & Bl. 489; *Heywood v. Potter*, 22 L. J., Q. B. 133.

(b) See *Smith v. Pritchard*, 8 C. B. 565.

(c) As to appeal see sect. 25, and *R. v. J.J. Warwicksh.*, 6 El. & Bl. 837; 25 L. J., M. C. 119. A general form of conviction is given in

there violently beating the same about the head with a large stick, contrary, &c.

2. *Under Section 5 of same Statute, for not feeding Cattle impounded.*

Impound a certain animal, to wit, a horse, in the common pound there, and on that day did neglect to provide and supply the said horse with a sufficient quantity of fit and wholesome food and water, contrary, &c.

CUSTOMS (a).

The stat. 8 & 9 Vict. c. 84, repealed the laws relating to the Customs passed up to that period, and several acts were then passed for the consolidation and regulation of this branch of the law. (See 8 & 9 Vict. cc. 85—93.) These, however, have since been further consolidated by that which now forms the governing statute upon the subject. (16 & 17 Vict. c. 107.)

The 7th division (sects. 109—261) relates to smuggling.

The 9th (sects. 263—268), to legal proceedings generally.

Penalties and forfeitures may be recovered or enforced by information, in the name of some officer of customs or excise, before one or more justices of the peace, and if they do not exceed 100*l.*, they must be so enforced or by proceedings in a county court, unless the commissioners of customs think that they ought to be enforced in a superior court or the defendant desires to have the case tried in a superior court. (Sects. 263, 264.)

Sects. 269—282 relate to proceedings before justices.

The following is a brief abstract of the most material sections under this division:—

Informations, convictions, &c., to be in form in schedules. (Sect. 269.) (b)

Justices may summon offender. Summons may be served personally, or by leaving it at last known place of abode, or on board any ship to which defendant

sect. 23 of 12 & 13 Vict. c. 92, but it is not so good a form as that given in Jervis' Act. See 17 & 18 Vict. c. 60, and 23 Vict. c. 22. A cock is an "animal" within the meaning of ss. 2 and 29 of 12 & 13 Vict. c. 92; *Bridge v. Parsons*, 3 B. & S. 282; 32 L. J., M. C. 95; but it is no offence under sect. 3 to assist at a cockfight, unless it be in a place kept

or used for the purpose, *Morley v. Greenhalgh*, 3 B. & S. 374; 32 L. J., M. C. 93; *Clarke v. Hague*, 2 El. & El. 281; S. C., 29 L. J., M. C. 105.

(a) As to the offence of cutting adrift boats belonging to the customs, see 19 & 20 Vict. c. 75, s. 3.

(b) Numerous forms will be found in the schedules.

may belong, or may have lately belonged. (Sect. 270, *ante*, p. 86.)

Justices may condemn goods liable to forfeiture. (Sect. 273.)

Justices may summon witnesses. (Sect. 274.)

Offences on the waters, &c., and jurisdiction. (Sect. 275, *ante*, p. 29.)

Justices of adjoining county may act when required. (Sect. 276, *ante*, p. 23.)

Justices of counties to have concurrent jurisdiction in cities, boroughs, &c., situate in their counties. (Sect. 277.)

Justice may commit in default of payment of penalty until paid. (Sect. 278.)

Officers of customs may execute warrants of commitment. (Sect. 279.)

Justices may mitigate penalties in certain cases to one-fourth. (Sect. 280.)

Persons detained and convicted, to be committed to gaol for nonpayment, without mitigation, or to hard labour, where required by the act. (Sect. 281.)

Penalties and forfeitures to be paid to commissioner. (Sect. 282.)

Any person committed in default of payment of a penalty less than 100*l.*, to be discharged in six months. (Sect. 283.)

Justices may imprison in default of payment of penalty, and if party has been previously convicted, may sentence to hard labour. (Sect. 284.)

Justices may commit to nearest house of correction, if none in their jurisdiction. (Sect. 285.)

Justices may commute hard labour, where offender is a female, &c. (Sect. 286.)

If prisoner be found to have been previously convicted, imprisonment may be extended. (Sect. 287.)

Married women may be committed. (Sect. 288.)

Writs of certiorari and habeas corpus not to issue, except on affidavit. (Sect. 290.)

No writ of habeas without notice to solicitor of customs. (Sect. 291.)

Then followed "The Supplemental Customs Consolidation Act, 1855." (18 & 19 Vict. c. 90.)

Sects. 25—27 relate to forfeiture of vessels found within certain places, having contraband goods on board.

Sect. 28 subjects persons on board vessels within ports of United Kingdom with contraband articles to penalty of 100*l.* and detention.

Sect. 29. Notice of seizure of goods under sect. 226 of

"Customs Consolidation Act, 1853," not required when seizure made on person, or in presence of offender.

Sect. 30. A justice may detain, or admit to bail, a person charged with offence against the customs laws.

Sect. 31. Costs, as well as penalty, to be stated in conviction.

Sect. 35. Condemnation of goods by any justice, as forfeited under customs laws, may be proved by production of such condemnation, purporting to be signed by justice, or an examined copy of the record of such condemnation, certified by clerk to such justices.

Sect. 36. Sect. 2 of 14 & 15 Vict. c. 99, not to extend to revenue cases, *ante*, p. 109.

Sect. 38. Penalty on making false declarations, signing false documents, untruly answering questions, and certifying false documents (*a*).

## DEAD BODIES.

*Conviction under 48 Geo. 3, c. 75, ss. 3 and 4, for not giving Notice to Churchwardens of finding.*

Did find a certain dead human body, cast on shore from the sea, in the parish of aforesaid [*or in* aforesaid, the same being an extra-parochial place], and did not within six hours after he so found the same as aforesaid give notice thereof to any of the churchwardens or overseers of the poor of the said parish [*or to the constable or headborough of the said extra-parochial place*], or cause such notice to be left at the last or usual place of abode of any of them, contrary, &c. (*b*).

(*a*) 11 & 12 Vict. c. 43, does not extend to acts relating to the customs, *ante*, pp. 60, 61, n. (*m*), 579, n. (*a*); and the Small Penalties Act, 28 & 29 Vict. c. 127, does not apply to any penalty imposed by any act relating to the Inland Revenue, s. 7, *ante*, p. 544. See Index, tit. "Customs," "Smuggling." An order of the commissioners of customs may be signed by such number of the commissioners as are authorized by patent to act for the whole body; *Ex parte White*, 1 D. & R. 151. In cases of forfeiture, the owners and masters of ships are liable for the acts of the crew; *Mitchell v. Torup*, Parker, 227; see *Attorney-General v. Robson*, 5 Exch. 790; and *ante*, p. 72, n. (*q*). Upon the construction of the word "knowingly," occurring

in informations for offences against the revenue, it has been said that the Court of Exchequer has established these distinctions: 1. That where the goods are found in the house of the party, knowledge shall be presumed; 2. That if they are found in his grounds, some direct evidence of his knowledge must be given; and 3. That if they are found in an outhouse belonging to him, the presumption shall not arise, unless it is shown that he himself kept the key. Dict. in arg. *Rex v. Abbott*, Doug. 553. But see *Ex parte Ransley*, 3 D. & R. 572; and *ante*, p. 72.

(*b*) See sect. 7, as to the churchwardens not removing or burying the body. See also 18 & 19 Vict. c. 79, as to burial of the dead.



## DEER-STEALING.

[By the Criminal Law Consolidation Statute (24 & 25 Vict. c. 96), whoever shall unlawfully and wilfully course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound, any deer in the *uninclosed* part of any forest, chase or purlieu shall forfeit such sum not exceeding 50*l.* as to a justice of the peace shall seem meet (sect. 12, which see also as to second offence). If the land be *inclosed* it is felony (sect. 13).

If any deer or the head, skin or other part thereof, or any snare or engine for the taking of deer, be found in the possession of any person or on his premises with his knowledge, and such person being taken or summoned before a justice of the peace shall not satisfy him that he came lawfully by such deer or part thereof, or had lawful occasion for such snare or engine and did not keep the same for any unlawful purpose, he shall forfeit a sum not exceeding 20*l.*; and if such person is not liable to conviction, then for the discovery of the party who actually killed or stole such deer, the justice, at his discretion, as the evidence given and the circumstances of the case shall require, may summon before him every person through whose hands such deer or part thereof shall appear to have passed, and if the person from whom the same shall have been first received or who shall have had possession thereof shall not satisfy the justice that he came lawfully by the same, he shall be liable to the said penalty (sect. 14). Whoever shall unlawfully and wilfully set or use any snare or engine for the purpose of taking or killing deer in any part of a forest, chase or purlieu (inclosed or not), &c., shall forfeit such sum not exceeding 20*l.* as to a justice shall seem meet (sect. 15). Right of deer-keepers and their assistants to seize the guns, &c., of offenders (sect. 17). See Index, tit. "Deer," and *R. v. King*, 1 D. & L. 721; 13 L. J., M. C. 43.]

## DESERTION AND INCITING TO DESERT.

(See MILITARY LAW.)

## DISEASES, PREVENTION OF. (See NUISANCE.)

## DISORDERLY HOUSE (a). (See GAMING.)

## DISSENTERS.

*Commitment under 52 Geo. 3, c. 155, s. 12, for Disturbing a Congregation of Dissenters during Divine Service (b).*

Whereas proof upon oath was, on, &c., made and given before me, J. P., &c., by C. D. and E. F., two credible witnesses in that behalf, that A. B., of, &c., on, &c., at, &c., did wilfully and

(a) See *Greig v. Bendeno*, El., Bl. & El. 133; 27 L. J., M. C. 294.

(b) See *R. v. Hall*, 1 T. R. 320. By sect. 12 the offender may be committed, for default of sureties, to take his trial at the next general or

quarter sessions. See also 18 & 19 Vict. c. 81, "To amend the Law concerning the Certifying and Registering of Places of religious Worship in England," which repeals the 15 & 16 Vict. c. 36.

of purpose maliciously and contemptuously come into a certain congregation of protestant dissenters, then and there assembled for religious worship, in a certain meeting-house there situate, then and long before certified, registered and recorded, according to the direction of the statute in that case made and provided, and did then and there wilfully and of purpose maliciously and contemptuously disquiet and disturb the said congregation, the doors of the said meeting-house where the said congregation were assembled not being then locked, barred or bolted; and whereas the said A. B. having this day appeared before me the said justice, and having been required by me to find two sufficient sureties, to be bound by recognizance in the penal sum of 50*l.* to answer for the said offence, hath refused and neglected, and still refuses and neglects, to find such sureties, I do hereby, &c.

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DISTRESS. (*See* LANDLORD AND TENANT.)

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DOCKYARDS (PROTECTION OF.)

(54 *Geo.* 3, c. 159; 26 & 27 *Vict.* c. 30, and 28 & 29 *Vict.* c. 125.)

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DOG.

1. *Conviction under 24 & 25 Vict. c. 96, s. 19, for Stealing a Dog (a).*

Did unlawfully steal, take and carry away a certain dog, to wit, a spaniel of the value of two pounds, the property of C. D., contrary, &c. (*b*).

(*a*) The stat. 12 & 13 *Vict.* c. 92, relates to cruelty to dogs; and statutes 2 & 3 *Vict.* c. 47, and 17 & 18 *Vict.* c. 60, s. 2, to using dogs for purposes of draught. By 28 & 29 *Vict.* c. 60, the owner of any dog shall be liable in damages for injury done by him to cattle or sheep, and it is not necessary to show a previous mischievous propensity in the dog, or the owner's knowledge thereof, or that the injury was attributable to neglect on the part of the owner. The occupier (or if several occupiers, the occupier of that part) of the premises where the dog was kept, is to be deemed the owner of the dog unless he can prove that he was

not the owner and that the dog was on the premises without his sanction or knowledge. Where the amount of damages claimed does not exceed 5*l.* it is to be recovered in a summary way under 11 & 12 *Vict.* c. 43.

(*b*) The defendant may be imprisoned or adjudged to forfeit and pay the sum of 20*l.* over and above the value of the dog. The conviction must be by two justices (*ante*, p. 33). The 19th section imposes a like pecuniary penalty for having possession of stolen dogs or their skins; the 20th section relates to receiving money for the restoration of stolen dogs.

2. *Conviction of a Person under Section 19, for being found in the Possession of a stolen Dog.*

A certain dog, the property of C. D., of, &c., by a certain ill-disposed person unknown, then lately before unlawfully stolen, taken and carried away, was then and there found in the dwelling-house and premises of the said A. B., there situate, by virtue of a certain search-warrant theretofore in that behalf duly granted, he, the said A. B., then well knowing the said dog to have been unlawfully stolen, taken and carried away, contrary, &c.

DRUNKENNESS.

*Conviction under 21 Jac. 1, c. 7, for Drunkenness.*

For that A. B., of, &c., on \_\_\_\_\_, at \_\_\_\_\_, was drunk, contrary, &c. (a).

EXCISE.

The collection and management of the duties of excise are now regulated by the 7 & 8 Geo. 4, c. 53; 4 & 5 Will. 4, c. 51; 4 Vict. c. 20; 10 & 11 Vict. c. 41; 11 & 12 Vict. c. 121; 12 & 13 Vict. c. 40; 13 & 14 Vict. c. 167; 15 & 16 Vict. c. 61; 18 & 19 Vict. c. 94 (Amendment Act); *Id.* c. 78; 26 Vict. c. 7, s. 13, and 26 & 27 Vict. c. 33. The procedure and practice in crown suits in the Exchequer are materially altered and amended by 28 & 29 Vict. c. 104.

[Proceedings under the sections of the excise laws which relate to the revenue of excise are excepted from the operation of 11 & 12 Vict. c. 43 (b).]

(a) The adjudication should state that, in default of distress, the defendant "shall be set in the stocks of the said parish of \_\_\_\_\_, there to remain for six hours." See 1 Burn's Justice, tit. "Ale-house," p. 136 (29th ed.).

(b) Sect. 35; see *ante*, pp. 60, 61, n. (m), 579, n. (a), 596, n. (a); and Index, tit. "Excise." By the stat. 12 Vict. c. 1, s. 1, the commissioners of excise and of stamps and taxes were made one consolidated board of commissioners, called "The Commissioners of Inland Revenue;" and see interpretation clause, sect. 17. Sect. 5 relates to the chief office of inland revenue. The term "Commissioners of

Inland Revenue" is substituted for the term "Commissioners of Excise."

By 23 & 24 Vict. c. 113, s. 39, persons taken before a justice charged with an offence against the laws of the inland revenue, may be remanded or admitted to bail. By 26 & 27 Vict. c. 33, s. 23, commissioners of taxes for any division of a county may hold their meetings in an adjoining city or other place of exclusive jurisdiction. The provisions of 12 & 13 Vict. c. 45, as to notice of appeal, do not apply to proceedings under the excise laws (see sects. 1, 2). The costs of an excise appeal are not payable by the crown; *R. v. Beadle*, 7 El. & Bl.

## FACTORIES (a).

### FERRY. (See WATERMAN.)

## FIREWORKS.

*Conviction under 23 & 24 Vict. c. 139, s. 8, for selling Fireworks without Licence.*

Did sell [or offer or expose to sale] unto one F. F., certain fireworks, to wit, ten squibs, without being licensed so to do, contrary, &c. (b).

## FISH AND FISHERIES.

1. *Conviction under 24 & 25 Vict. c. 96, s. 24, for taking or destroying Fish in Water, which is private Property, but not running through or being in any Land adjoining or belonging to the Dwelling-house of any Person being the Owner of such Water, or having a Right of Fishery therein (c).*

For that the said A. B., on &c., at &c., in a certain pond of water there situate, being the private property of C. D., [or wherein

492; 26 L. J., M. C. 111. All proceedings for the recovery of penalties and forfeitures, under the laws relating either to the customs or inland revenue, are instituted and conducted by the officers of those respective boards, under the control and direction of the commissioners, who supply their own forms of informations, summonses, convictions and warrants; for which they are, of course, responsible. It has not been thought necessary, therefore, to insert any precedents under the head of excise; especially as the officers will not permit an information to be laid, or a conviction to be drawn up, except in their own forms. Several precedents, however, will be found in 2 Burn's Jus., tit. "Excise and Customs," p. 1013 (29th edit.)

(a) See 7 Vict. c. 15; 8 & 9 Vict. c. 29, and schedule; 10 & 11 Vict. c. 29; 13 & 14 Vict. c. 54; 16 & 17 Vict. c. 104; 20 Vict. c. 38; 23 & 24 Vict. c. 78; 26 & 27 Vict. c. 33; and 27 & 28 Vict. c. 48. The schedules contain forms of convic-

tions and warrants. Proceedings under the statutes relating to the labour of young persons in factories are excepted from 11 & 12 Vict. c. 43; see sect. 35, and *ante*, p. 60. As to offences under these statutes, see *Ryder v. Mills*, 3 Exch. 853; *Coe v. Platt*, 6 Exch. 752; *Caswell v. Worth*, 5 El. & Bl. 849; 25 L. J., Q. B. 121; 2 Jur., N. S. 116; *Doel v. Sheppard*, 5 El. & Bl. 856; 25 L. J., Q. B. 124; 2 Jur., N. S. 118; *Hardcastle v. Jones*, 3 B. & S. 153; 32 L. J., M. C. 49; *Taylor v. Hickes*, 12 C. B., N. S. 152; 31 L. J., C. P. 242; *Hoyle v. Oram*, 12 C. B., N. S. 124; 31 L. J., C. P. 213; *Haydon v. Taylor*, 4 B. & S. 519; 33 L. J., M. C. 30; *Coles v. Dickenson*, *Id.* 235. By 7 & 8 Vict. c. 15, s. 45, the conviction must be before two justices, but warrants thereon may be issued by one.

(b) See also 25 & 26 Vict. c. 98, and *Bliss v. Lilley*, 32 L. J., M. C. 3.

(c) The stat. 26 & 27 Vict. c. 10, prohibits the exportation of salmon at certain times; and see 28 & 29 Vict. c. 121, s. 65.

C. D. then had a private right of fishery,] six fish called carp, of the value of 3s., then and there unlawfully and wilfully, and against the consent of the said C. D., did take and destroy [take or destroy, or attempt to take or destroy] (otherwise than by angling between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset,) (a) against the form of the statute in that case made and provided: I, the said J. N., do therefore adjudge the said A. B., for his said offence, to forfeit and pay the sum of                      pounds [not exceeding five pounds] over and above the value of the said carp so taken and destroyed, and the further sum of 3s. being the value of the carp, and also to pay the sum of                      shillings for costs, and in default of immediate payment of the said sums to be imprisoned in the house of correction at                      , in the county aforesaid and there kept to hard labour for the space of                      (b), unless the said sums shall be sooner paid. And I direct that the said sum of £                      shall be paid and applied according to law (c), and that the said sum of 3s. shall be paid to the said C. D. (d). And I order that the said sum of                      shillings for costs shall be paid to the said C. D.

[If the boundary of any parish, township or vill shall happen to be in or by the side of such water, it is sufficient to prove that the offence was committed in the parish named in the information, or any parish adjoining thereto; when the river runs between two counties, or the fish are taken in the sea between high and low-water mark, there being an exclusive right of fishing there in another person, see *ante*, p. 23. Appeal, sect. 110. No *certiorari*, sect. 111.]

2. *Conviction under the same Section, for taking or destroying Fish, by Angling between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, in Water running through or being in Land adjoining or belonging to the Dwelling-house of the Owner, or the Person having a Right of Fishery therein (e).*

For that the said A. B., on &c., between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, that is to say, about the hour of eight o'clock in the forenoon of the same day, at &c., in a certain stream of water then and there running through a certain close adjoining the dwelling-house of C. D., of the parish aforesaid, in which said

(a) If the offence consisted in angling between these hours in such water, the penalty is not to exceed 2l. (same section).

(b) See sect. 107.

(c) See sect. 106.

(d) If the complainant had been examined in proof of the offence, no

part of the sum could be awarded to him; but now, by 18 & 19 Vict. c. 126, s. 22, the sum may be awarded to a party who has been examined as a witness.

(e) See *Hudson v. M'Rae*, 4 B. & S. 585; 33 L. J., M. C. 65.

stream of water he the said C. D. had then and there a right of fishery, six fish called trout, of the value of 2s., did then and there, by angling, unlawfully and wilfully, and against the consent of the said C. D., take and kill [take or destroy, or attempt to take or destroy,] against the form of the statute in that case made and provided: I, the said J. N., do therefore adjudge the said A. B., for his said offence, to forfeit and pay the sum of £ , [not exceeding 5l.] &c.

[If the fish are taken (as in this case) in any water which runs through or is in land adjoining or belonging to the dwelling-house of the owner, or person having a right of fishery therein, the penalty is not exceeding 5l. (sect. 24).]

By sect. 25, the tackle of persons fishing may be seized, after demand and refusal to deliver it up, by the owner of the ground, water or fishery, where the offender shall be so found fishing, or by his servants, or any persons authorized by him; but in case it is so delivered up, or taken from the offender (unlawfully angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset), he cannot be convicted in either of the pecuniary penalties above mentioned (a).

### 3. *Conviction under 24 & 25 Vict. c. 109, s. 14, for taking unseasonable Salmon (b).*

Did unlawfully and wilfully take certain unclean and unseasonable salmon, to wit, three unclean and unseasonable

(a) See same section; also *Hughes v. Buckland*, 15 M. & W. 346.

(b) This act (continued by 28 & 29 Vict. c. 119, and amended by 28 & 29 Vict. c. 121) was passed in 1861, for the purpose of increasing the supply of salmon, and contains very important provisions for that end. It prohibits the taking of unseasonable fish or the young of salmon, the destruction of salmon by spears, &c., and provides for the free passage of salmon in rivers for the deposit of their spawn. By sect. 35, penalties may be recovered within six months before two justices, as directed by 11 & 12 Vict. c. 43, and a portion, not exceeding one-half of the penalty, shall be paid to the person on whose complaint it is recovered. If the offence is committed in waters forming the boundary between two counties, districts of quarter sessions or petty sessions, it may be prosecuted before any justice in either of such counties or districts (sect. 36). If committed on the sea-

coast or at sea, beyond the ordinary jurisdiction of any justice, it shall be deemed to have been committed within the body of any county abutting on such sea-coast, or adjoining such sea (s. 37). See *ante*, p. 28. The 10th section fixes the size of the mesh of nets used for taking salmon, see *Thomas v. Evans*, El. Bl. & El. 171; 27 L. J., M. C. 172. What is a fixed engine, under section 11; *Thomas v. Jones*, 34 L. J., M. C. 45; see 28 & 29 Vict. c. 121, ss. 39—45. Destruction of, *Williams v. Blackwall*, 2 H. & C. 33; 32 L. J., Exch. 174. Catching salmon within fifty yards below a dam not having a fish pass attached thereto, contrary to sect. 12; *Moulton v. Wilby*, 2 H. & C. 25; 32 L. J., M. C. 164. Neglect by occupier of a mill and fishing mill dam to remove obstructions to the passage of salmon during the close season, contrary to sect. 20; *Hodgson v. Little*, 16 C. B., N. S. 198; 32 L. J., M. C. 220. Claim of right;

salmon, then and there being in a certain river there situate [or there running between] [or forming] the boundary of the said [county] of C., and the adjoining [county] of S., the said fish not being accidentally taken or taken for artificial propagation or other scientific purpose (a), contrary, &c.

## FRIENDLY SOCIETIES.

(See 18 & 19 Vict. c. 63 (b); 23 & 24 Vict. c. 58; and 25 & 26 Vict. c. 87.)

## GAME.

### 1. *General Form of an Information for killing Game without a Certificate, under 1 & 2 Will. 4, c. 32, s. 23 (c).*

                  } Be it remembered, that on &c., at &c., A. B.,  
to wit.        } of                   , in the said county, labourer, personally  
came before me, J. N., esq., one of her majesty's justices of

*Hudson v. M'Rae*, 4 B. & S. 585; 33 L. J., M. C. 65; *R. v. Stimpson*, 4 B. & S. 307. By "The Salmon Fishery Act, 1865" (28 & 29 Vict. c. 121), the act of 1861 is amended in respect of the appointment and proceedings of conservators for the preservation of salmon (sects. 4—32), the issue of licences for the taking of salmon (sects. 33—38), and the provisions relating to fixed engines (sects. 39—45, 49); special commissioners under the act may be appointed, their powers and duties are defined, and an appeal is given from their proceedings (sects. 46—55); power is given to justices to inflict imprisonment with hard labour instead of a penalty on a third conviction in certain cases (sect. 56), and the penalty for a second offence and third offence in other cases is declared (sect. 57); forfeiture is added to the penalty under sect. 17 of the act of 1861 (sect. 58); the consent in writing of the board of conservators (where one is established) is required, for having salmon roe, &c., for artificial propagation or other scientific purposes (sect. 60); justices are competent to convict, although they may be conservators or subscribers to a society for the protection of salmon or trout, but they may not hear cases in respect of offences committed on

their own land (sect. 61, and see *R. v. Allen*, 33 L. J., M. C. 98); when any penalty is recovered on complaint of board of conservators or person authorized by them, the penalty and proceeds of forfeiture (unless the justices for special reasons decide otherwise) shall be directed to be "paid to the board, to be applied by them for the purposes of the Salmon Fishery Acts, 1861, 1865" (sect. 62); the prohibition against fishing with lights, spears, &c., and using roe as a bait, is applied to trout in a salmon river in a fishery district subject to a board of conservators, and no person is to fish for trout in such river between the 2nd of November and the 1st of February following, both inclusive, under penalty not exceeding 2l. (sect. 64); appeal (sect. 66).

(a) See sect. 60 of 28 & 29 Vict. c. 121.

(b) *R. v. Grant*, 19 L. J., M. C. 59; *R. v. Evans*, 23 *Id.* 100.

(c) This act repeals almost all former acts relating to game. See 9 Geo. 4, c. 69; 7 & 8 Vict. c. 29. See, as to trespass in search of game, *Osbond v. Meadows*, 12 C. B., N. S. 10; 31 L. J., M. C. 238; *R. v. Pratt*, 4 El. & Bl. 860; 24 L. J., M. C. 113; *Fletcher v. Calthrop*, 6 Q. B. 880. See *Cureton v. The Queen*, El. Bl. & El. 208; 30 L. J., M. C. 149;

the peace in and for the said county, and now informs me, upon his oath duly administered to him in that behalf, that C. D., late of \_\_\_\_\_, in the said county, labourer, within the space of three calendar months now last past, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at the parish of \_\_\_\_\_ in the said county, did unlawfully and wilfully kill and take game, to wit, a hare, he the said C. D. not being authorized so to do, for want of a game certificate, contrary to the statutes (a) in such case made and provided; whereby the said C. D. hath forfeited the sum of 5*l.*; and which said charge so preferred by the said A. B. is further deposed to before me on the oath of S. G., a credible witness on this behalf (b), such oath being now duly administered to the said S. G. in this behalf. And thereupon the said A. B. prays the judgment of me, the said justice, in the premises, and that the said C. D. may be summoned to make answer and defence thereto.

Taken and sworn before me, } A. B.  
the day and year first above }  
mentioned. J. N.

2. *Conviction (c) in pursuance of the above Information, under 1 & 2 Will. 4, c. 32, s. 23.*

Be it remembered, that on &c., at &c., C. D. is, to wit. } upon the complaint of A. B., of &c., convicted before us, J. N. and G. F., esquires, two (d) of her majesty's justices of the peace in and for the said county; for that he, the said C. D., within the space of three calendar months now last past, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at the parish of \_\_\_\_\_, in the said county, did unlawfully and wilfully kill and take game, to wit, a hare, he, the said C. D.,

*Padwick v. King*, 7 C. B., N. S. 88; 9 L. J., C. P. 42; *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213; *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28; *Cattell v. Ireson*, El. Bl. & El. 91; 27 L. J., M. C. 167; *R. v. Pratt*, 24 *Id.* 113. The 4th section, which imposes penalties for selling game out of season, extends to live birds; *Loom v. Bailey*, 30 L. J., M. C. 31. As to negating exemptions, see *ante*, pp. 218, 228—248; several penalties, *ante*, p. 259; index, tit. "Game," and see also Chitty's Statutes, by Welsby & Beavan, vol. ii., tit. "Game." How far the stat. 11 & 12 Vict. c. 43, applies to these cases, see *ante*, p. 579, n. (a), and *R. v. Hyde*, 21 L. J., M. C. 94; 16 Jur. 337. Some of

the clauses of 1 & 2 Will. 4, clearly relate only to the "revenue of excise" (see sects. 17 & 18), and so are exempt from the operation of 11 & 12 Vict. c. 43; see *ante*, p. 60, n. (f), and p. 596, n. (a).

(a) 1 & 2 Will. 4, c. 32; 52 Geo. 3, c. 93, sched. (L) rules 12, 13.

(b) By 6 & 7 Will. 4, c. 65, s. 9, the information must be verified on the oath of another person than the informer before a summons issues. Any person may be the informer, though he is not the owner or occupier of the land. *Ante*, p. 70.

(c) See other forms of convictions in Deacon's Game Laws, p. 110 *et seq.*

(d) This conviction must be by two justices (see *ante*, p. 33).



not being authorized so to do for want of a game certificate, contrary to the statutes in such case made and provided. And we do adjudge that the said C. D. shall, for the said offence, forfeit the sum of 5*l.*, and shall forthwith pay the said sum, together with the sum of £ , for cost; and that in default of immediate payment of the said sums, he, the said C. D., shall be imprisoned and kept to hard labour in the at , in the said county, for the space of two calendar months, unless the said sums shall be sooner paid. And we direct, that (a) one moiety (a) of the said sum of 5*l.* shall be paid to the said A. B., the person who hath informed and prosecuted for the same; and that the other moiety thereof shall be paid to J. K., being one of the overseers of the poor of the said parish of , to be by him applied according to the directions of the statute in such case made and provided. And we order, that the said sum of £ , for costs, shall be paid to the said complainant A. B. Given under our hands the day and year first above mentioned.

[This form of conviction is given by the 39th section of the act, which does not require it to be under seal.

By sect. 42, it is declared to be unnecessary in any proceeding to negative by evidence any certificate, licence, consent, authority or other matter of exception or defence; but that the party seeking to avail himself of any such matter shall be bound to prove the same.

The 44th section gives an appeal to the sessions; but, by sect. 45, there is no *certiorari*. And it has been held in the case of *R. v. Hester*, 4 Dowl. 589, that the subsequent act of 5 & 6 Will. 4, c. 20, s. 21, which directs a moiety of the penalties to be paid to the informer, does not revive the right to a *certiorari*, which was taken away by the 45th section of the former statute.]

### 3. *Conviction under 1 § 2 Will. 4, c. 32, s. 23, for using a Dog for the purpose of searching for or killing Game, without a Certificate, with an Order giving Time for the Payment of the Penalty (b).*

For that the said C. D., within three calendar months now last past, to wit, on the day of , in the year of our Lord , at the parish of , in the county aforesaid, did unlawfully use a certain dog called a pointer [*dog, gun, net, or other engine or instrument*] for the purpose of searching for, killing and taking game, he, the said C. D., not being then and there authorized so to do for want of a game certificate, contrary to the statutes (c) in such case made and provided: And we do adjudge, that the said C. D. shall, for the said offence, forfeit the sum of £ [not exceeding 5*l.*] And we order, that the

(a) By 5 & 6 Will. 4, c. 20, s. 21, a moiety of the penalty is directed to be paid to the informer; see *Griffith v. Harries*, 2 M. & W. 335; but since 11 & 12 Vict. c. 43, it is sufficient to direct the penalty to be

"paid and applied according to law;" *R. v. Hyde*, 21 L. J., M. C. 94.

(b) See Deacon's Game Laws, 122.

(c) 1 & 2 Will. 4, c. 32; 52 Geo. 3, c. 93, sched. (L), rules 12, 13.

said sum of £ , together with the sum of £ for costs, shall be paid by the said C. D. on or before the day of . And in default of payment on or before that day, we adjudge the said C. D. to be imprisoned and kept to hard labour in the at , in the said county, for the space of , [not exceeding two calendar months, where the amount to be paid, exclusive of costs, shall not amount to 5*l.*; and for any term not exceeding three calendar months in any other case] unless the said sums shall be sooner paid. And we direct, that one moiety of the said sum of £ shall be paid to A. B., the person who hath informed and prosecuted for the same (a), and that the other moiety thereof shall be paid to J. K., being one of the overseers of the poor of the said parish of , to be by him applied according to the directions of the statute in such case made and provided. And we order that the said sum of £ , for costs, shall be paid to the said A. B. Given under our hands the day and year first above mentioned.

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4. *Conviction under the 25th Section of the same Statute, of an uncertificated Person, for selling Game without a Licence.*

For that the said C. D. not having obtained a game to wit. } certificate, and not being licensed to deal in game, according to the directions of the statute in such case made and provided, within the space of three calendar months now last past, to wit, on the day of , in the year aforesaid, at the parish of , in the said county, did unlawfully sell [or offer for sale] certain game, to wit, three partridges, to one W. D., contrary to the form of the statute in such case made and provided: And we do adjudge, that the said C. D. shall, for his said offence, forfeit the sum of 6*l.*, the same being after the rate of 2*l.* for every head of game so sold as aforesaid, and shall forthwith pay the sum of 6*l.*, together with the sum of £ , for costs. And in default of immediate payment of the said sums [&c., as in last precedent].

[All the above convictions must be before two justices, but the following conviction may be made by one.]

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5. *Conviction, under the 30th Section of the same Statute, for Trespassing on Land in pursuit of Game (b).*

For that the said C. D., within the space of three calendar months now last past, to wit, on the day of instant, in the day-time (c) of the same day, that is to say, about nine

(a) See 5 & 6 Will. 4, c. 20, s. 21.

(b) *Ante*, p. 603, n. (b).

(c) This allegation appears to be necessary, as the 30th section con-

o'clock in the forenoon of the same day, at the parish of \_\_\_\_\_, in the county aforesaid, unlawfully and wilfully committed a trespass on a certain close situate in the parish aforesaid, and then and there being in the occupation of the said A. B., by then and there unlawfully and wilfully entering into the said close, and being there in the day-time as aforesaid, in search and pursuit of game, that is to say, a hare, without the licence and consent of the said A. B. (a), or of any person having the right of killing game upon the said close, contrary to the form of the statute in such case made and provided. And I, the said justice, do adjudge that the said C. D. shall, for his said offence, forfeit the sum of £ \_\_\_\_\_, [not exceeding 2l.,] and shall forthwith pay the said sum of £ \_\_\_\_\_, together with the sum of £ \_\_\_\_\_, for costs. And in default of immediate payment [&c. as before] (b).

fines the remedy by summary conviction expressly to a trespass in the day-time.

(a) If the actual occupier of the land has sanctioned the trespass, then it will be proper merely to negative the licence of the person entitled to the game. By sect. 30, the lessor, landlord or other person having the right of killing the game upon the land is declared, for the purpose of prosecuting for each of the offences mentioned in that section, to be the legal occupier thereof, whether the actual occupier shall or shall not have given such leave or licence. And the lord, or steward of the crown, of any manor, lordship or royalty, is to be deemed also the legal occupier of the land of the wastes or commons within the same. Where right of sporting reserved; *Spicer v. Barnard*, 1 El. & El. 874; 28 L. J., M. C. 176; *R. v. Kayley*, 10 L. T., N. S. 339. Claim of title, *Id.*

(b) The Poaching Prevention Act, 25 & 26 Vict. c. 114, s. 2, empowers any constable, &c., in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from land, where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person and having in his possession any game unlawfully obtained, or any gun, &c.; and should there be found any game, or such article or thing as aforesaid, upon such person, &c., to seize and detain such game, article or thing;

and then such constable, &c., shall apply for a summons. It was held to be unnecessary, for the purpose of obtaining a summons and conviction under this section, to search the person, when the constable actually saw him with a rabbit in his hand; *Hall v. Knox*, 4 B. & S. 515; 33 L. J., M. C. 1. And proof that defendants were found together in a highway at six o'clock, A.M., with bags containing a hare and several rabbits, and with nets and stakes, is evidence upon which justices may convict them under this section of having obtained the game by having been unlawfully on land in pursuit of game, or of having used the nets for the purpose of unlawfully taking game, without direct proof that any of the defendants had been upon any land or had used any of the nets; *Evans v. Botterell*, 3 B. & S. 787; 33 L. J., M. C. 50; *Brown v. Turner*, 12 C. B., N. S. 875; 32 L. J., M. C. 106. Penalties under the act are to be recovered and enforced as penalties under 1 & 2 Will. 4, c. 32; and the provisions of 11 & 12 Vict. c. 43, are made applicable to proceedings under the stat. (See sects. 3 and 4.) *Certiorari* is taken away (sect. 5), but an appeal is given (sect. 6). By 24 & 25 Vict. c. 96, s. 17, whoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any warren or ground lawfully used

GAMING. (*Post*, LOTTERY.)1. *Conviction for keeping a Hazard Table on 12 Geo. 2, c. 28 (a).*

A. B., of &c., on &c., at a certain house in \_\_\_\_\_ street, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, did set up, maintain, and keep a certain fraudulent game, to be determined by the chance of dice, under the denomination of the game of hazard, against the form of the statute in such case made and provided.

2. *Conviction under 17 & 18 Vict. c. 38, s. 4 (b), for keeping a Common Gaming House.*

That A. B., of &c., on &c., then having the use of a certain room in a house in \_\_\_\_\_ street, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, did unlawfully keep and use the said room for the purpose of unlawful gaming being carried on therein, contrary, &c.

3. *Under 8 & 9 Vict. c. 109, s. 11, for keeping a Billiard Table without Licence.*

Did unlawfully keep in his house there situate a public billiard table for public use, without being duly licensed so to do, and the said A. B. not then holding any licence granted under an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to regulate the granting of Licences to Keepers of Inns, Alehouses and Victualling Houses in England," called a victualler's licence, for the said house where the said public billiard table was so then and there kept as aforesaid.

for the breeding or keeping of hares or rabbits, whether the same be enclosed or not, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall forfeit such sum not exceeding 5*l.* as to a justice shall seem meet. (Sect. 17. But this is not to affect any person taking or killing in the daytime any rabbits on any sea-bank or river-bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank, *Id.*) See 7 & 8 Vict. c. 29, as to taking game on a public highway; and 11 & 12 Vict. c. 29, enabling persons having a right to kill hares to do so without taking out a certificate.

(a) See *R. v. Rogier*, 2 D. & R. 431; 1 B. & C. 272. The conviction

should set forth the particular game; *Colborne v. Stockdale*, 1 Str. 493. See *R. v. Liston*, 5 T. R. 338; *R. v. Tuddenham*, 9 Dowl. 937; *M'Kinnell v. Robinson*, 3 M. & W. 434. See 8 & 9 Vict. c. 109, s. 8, and 17 & 18 Vict. c. 38, s. 2, as to the proof required of gaming.

(b) See *Wray v. Ellis*, 1 El. & El. 276; 28 L. J., M. C. 45, as to the adjudication of the penalty, when adjudged by a metropolitan police magistrate; see also *Crockford v. Lord Maidstone*, *Oliphant on Horses*, App. 281; *R. v. Stannard*, 33 L. J., M. C. 61; and 16 & 17 Vict. c. 119, for the suppression of betting-houses. See *Doggett v. Cattermoss*, 34 L. J., C. P. 159, in the Exch. Ch., as to the meaning of the word "place," in the 5th section of. See *post*, tit. "Vagrant."

## GARDENS AND ORNAMENTAL GROUNDS.

[The stat. 26 Vict. c. 13, provides for the protection and charge of enclosed gardens and ornamental grounds in cities and boroughs set apart for the public use of inhabitants of squares, &c., in certain cases; see sects. 4, 5, 6.]

## GUNPOWDER.

*Conviction under 23 & 24 Vict. c. 139, s. 20, for improperly carrying Gunpowder by Land (a).*

Convey in a certain carriage at the same time, by land, to wit, in a van called the "daily van," at the said parish of a certain quantity of gunpowder, to wit, thirty-two barrels of gunpowder, the said carriage in which the aforesaid gunpowder was so conveyed by land not then and there having a complete covering of wood, painted cloth, tarpauling or wadmill tilts over all the gunpowder therein contained, contrary, &c., and which said gunpowder and the barrels containing the same were then and there seized and detained by one J. F., one of the constables of the said parish of .

## HACKNEY COACH.

By 1 & 2 Will. 4, c. 22, s. 1, all former acts relating to hackney coaches and carriages in the metropolis are repealed, and new regulations made respecting them (b).

The 63rd section declares the mode of proceeding for penalties before a justice of the peace; and by sect. 65, every summons, conviction, warrant of distress or commitment may be drawn or made out according to the forms contained in the schedule to the act; and every such summons, warrant and conviction shall be good and effectual, without stating the case of the facts or evidence in any more particular manner.

By sect. 66, upon any complaint being lodged before a justice against the proprietor or driver of any hackney carriage, or against any waterman or assistant to drivers, the justice may in his discretion issue either a warrant for the apprehension of the party, or a summons for his appearance. Warrant, or summons.

By sect. 58, any summons may be served personally, or may be left at the party's usual or last place of abode, or (in the case of a licensed proprietor or licensed waterman) at the place specified in any such licence as the place of abode of such party; and if that place cannot be found, or the party shall not be Service.

(a) See *R. v. Smith*, 5 M. & S. 133, and *Biggs v. Mitchell*, 2 B. & S. 523; 31 L. J., M. C. 163.

(b) And see 6 & 7 Vict. c. 86, and 12 & 13 Vict. c. 7, as to omnibuses and other hackney carriages; and

10 & 11 Vict. c. 89, as to provincial hackney carriages. See Welsby and Beavan's Statutes, vol. 2, tit. "Hackney Carriages," and *Buckle v. Wrightson*, 34 L. J., M. C. 43, 45.

known thereat, then a copy of the summons may be fixed up in some conspicuous place in the head office for stamps to be appointed for that purpose.

**Mitigation.**

By sect. 70, the justices have power to mitigate any penalty, provided all reasonable costs and charges expended or incurred in prosecuting for the offence are allowed over and above the sum to which the penalty is mitigated.

**Application of penalties.**

By sect. 71, all pecuniary penalties, except such as are recovered in the city of London or borough of Southwark, are directed to be distributed, half to the queen, and half (with full costs) to the informer.

**Witnesses.**

By sect. 72 any informant or complainant, or other person, is declared a competent witness, notwithstanding he may be entitled to any part of the penalty, or any compensation or reward, on the conviction of the offender.

There is no appeal given by the act, and (by sect. 63) *certiorari* is taken away.

### HAWKERS AND PEDLARS.

*Conviction of a Hawker, for exposing a Parcel of Boxes to sale without a Licence, contrary to 50 Geo. 3, c. 41 (a).*

Be it remembered, that on \_\_\_\_\_, at \_\_\_\_\_, T. N.,  
to wit. } of \_\_\_\_\_, inspector of hawkers' licences, came  
before me, E. B., esq., one of her majesty's justices of the peace  
for the said county of \_\_\_\_\_, residing near the place where the  
offence hereinafter mentioned was committed, and informed me,  
that J. G., of \_\_\_\_\_ street, in the county of \_\_\_\_\_ aforesaid,  
heretofore, to wit, on \_\_\_\_\_, was a hawker and trading person,  
going to other men's houses and travelling on foot in England,  
carrying to sell, and exposing to sale, certain goods, wares and  
merchandize, to wit, a parcel of boxes; and that he, the said  
J. G., being such hawker and trading person as aforesaid, did,  
on the day and year last aforesaid, at the parish and county last  
aforesaid, as such hawker and trading person, carry to sell,  
and expose to sale, certain goods, wares and merchandize, to

(a) The proceedings under this act, as it relates to the revenue of excise, are not affected by 11 & 12 Vict. c. 43, if the information be on a section which relates to the revenue, *R. v. Bakewell*, ante, p. 579, n. (a). See 27 & 28 Vict. c. 56, s. 7, and *R. v. Turner*, 4 B. & Ald. 510; *R. v. Websdell*, 2 B. & C. 136; 3 D. & R. 360; *R. v. Little*, 1 Burr. 913; *Allen v. Sparkhall*, 1 B. & Ald. 100; *Dean v. King*, 4 B. & Ald. 517; *Attorney-General v. Tongue*, 3 Chitty's Buru's Just.; *R. v. McGill*, 2 B. & C. 142; 2 D. & R. 377; *Houfe v.*

*Smith*, 33 L. T. 124; and *Watkin v. Fenwick*, 23 J. P. 516; ante, pp. 204—208. To avoid conviction on the ground that the sale was in "a legally established market," the market must be one created by grant, and not one merely *de facto*; *Benjamin v. Andrews*, 5 C. B., N.S. 299; 27 L. J., M. C. 310. The 20th section of 50 Geo. 3, c. 41, applies to the offences mentioned in sect. 17, and, therefore, a hawker who trades without a licence contrary to the latter section may be arrested under the former; *Id.*; see "Market."

wit, a parcel of boxes, and was then and there found trading as aforesaid, without a licence in that behalf directed and required by the statute in such case made and provided, contrary to the form of the said statute.

### HEALTH (PUBLIC) ACT, 1848 (a). (See NUISANCE.)

*Form of Conviction given in Schedule (E) to 11 & 12 Vict. c. 63, s. 130.*

County of } Be it remembered, that on the                      day of  
[or borough, &c.] } , in the year of our Lord                      , A. B.  
to wit. } is convicted before me [or us]                      one  
[or two] of her majesty's justices of the peace in and for the  
county [or borough, &c.] of                      [here describe the offence generally,  
and the time and place when and where committed in the  
words of this act, or as near thereunto as may be], contrary to the  
Public Health Act, 1848; and I [or we] do adjudge that the  
said A. B. hath forfeited for his said offence the sum of [amount  
of penalty adjudged], and that he do pay to C. D. the further  
sum of                      as for his costs in this behalf.

Given under my hand and seal [or our hands and seals] the  
day and year first above written.

(Signed)

J. S. (L. s.)

(L. s.)

### HIGHWAY.

By 5 & 6 Will. 4, c. 50 (b), the former acts relating to Highways are repealed, and the law is consolidated and amended.

(a) See 18 & 19 Vict. c. 115; 17 & 18 Vict. c. 95; 15 & 16 Vict. c. 42. Bye-law to remove snow held invalid, *R. v. Rose*, 24 L. J., M. C. 130; 1 Jur., N. S. 802. Bye-law fixing stands of hackney carriages, *Bennett v. Blackpool*, 4 H. & N. 127; 28 L. J., M. C. 203. Brickmaking is not necessarily such a noxious manufacture as is contemplated by sect. 64, *Wanstead v. Hill*, 13 C. B., N. S. 479; 32 L. J., M. C. 135. Justices cannot review decision of Local Board given under s. 54, *Hargreaves v. Taylor*, 3 B. & S. 613; 32 L. J., M. C. 111. Notice of action, *Newton v. Ellis*, 1 Jur., N. S. 850. See as to execution of works by Board of Health, *Blything Union v. Warton*, 3 B. & S. 352; 32 L. J., M. C. 132; *Moseley v. Ely*, 6 El. & Bl. 518; 26 L. J., M. C. 23;

*Ackers v. Mayor of Salford*, 16 M. & W. 85; *Nowell v. Mayor, &c., of Worcester*, 23 L. J., Exch. 139; *Elmes v. Norwich Board of Health*, 3 El. & Bl. 517; 23 L. J., Q. B. 203. Time for taking proceedings before justices to recover amount expended in such works, *Jacomb v. Dodgson*, 3 B. & S. 461. Service of notice under sects. 69 and 150 of 11 & 12 Vict. c. 63, *Mason v. Bibby*, 2 H. & C. 881; 33 L. J., M. C. 105; *Peck v. Waterloo Board of Health*, *Id.* 11; 2 H. & C. 709. Sufficiency of notice under sect. 69, *Bayley v. Wilkinson*, 33 L. J., M. C. 161; 16 C. B., N. S. 161. Arbitration under, *Id.*, and *Ringland v. Lowndes*, 15 C. B., N. S. 173; 33 L. J., Exch. 25, *S. C.*, in error; 12 W. R. 1010.

(b) See 25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101; also 2 & 3 Vict.

The 94th section prescribes the mode of proceeding before a justice of the peace, when the highway is out of repair (*a*).

Sect. 95 prescribes the mode of proceeding if the obligation to repair is disputed (*b*).

**Costs.**

By sect. 97, a justice is empowered to award costs against either party upon any information; and in default of payment to issue a warrant of distress; and in default of distress, to commit the party for a period not exceeding one calendar month, unless the sum so awarded, together with the costs of the distress, are sooner paid (*c*).

**Witnesses.**

By sect. 100, inhabitants of parishes, and surveyors and other officers appointed under the act, are declared to be competent witnesses; and sect. 102 imposes a penalty of 5*l.* on any witness not attending or refusing to give evidence.

**As to information.**

By sect. 101, any justice may summon a party complained against before any two justices, who may proceed to convict the offender, although no information in writing shall have been taken.

**Mode of proceeding.**

By sect. 103, all penalties, &c. may be levied by distress and sale; and the offender may be detained until the return of the warrant of distress, unless he gives security to appear on the day of the return, which must not be later than seven days from the time of taking such security. But in case it appears to the justices that there is not a sufficient distress to be found, the justices may, at their discretion, without issuing any warrant of distress, commit the offender for such period of time as if there had been a return of *nulla bona* to a warrant of distress: viz., for any term not exceeding three calendar months, to be kept to hard labour, unless the penalty, &c., shall be sooner paid.

**Application of penalties.**

By the same section, all penalties are to be paid, half to the

c. 45, and 5 & 6 Vict. c. 55, s. 9, requiring gates where a railroad crosses a highway; 8 & 9 Vict. c. 71, extending sect. 48 of 5 & 6 Will. 4, c. 50; 12 & 13 Vict. c. 14, for recovering costs of distraining for rates (*Walsh v. Southworth*, 6 Exch. 150); and see forms in schedule thereto. Action against surveyor distraining for rates, where the property was exempt, *Freeman v. Read*, 4 B. & S. 174; 32 J. J., M. C. 226.

(*a*) As to form of orders under, see *George v. Chambers*, 11 M. & W. 149; *R. v. Watford*, 4 D. & L. 593; *R. v. Morice*, 2 *Id.* 952; *R. v. Hickling*, 7 Q. B. 890; *R. v. Martin*, 2 *Id.* 1037; *R. v. Wilts*, 8 Dowl. 717; *R. v. Clark*, 5 Q. B. 887; *R. v. Preston*, 18 L. J., M. C. 4; *Ex parte Bartlett*, 6 Jur. N. S. 119; 30 L. J., M. C. 65. When obligation to repair is denied

by the parish, the special sessions cannot proceed summarily against the surveyor, but must direct an indictment against the inhabitants of the parish, *R. v. Arnold*, 27 L. J., M. C. 92. Assistant surveyor is not bound to keep accounts, and therefore is not liable under sect. 44, for not making them out and laying them before the vestry and justices in special sessions, *Adams v. Lakeman*, 4 Jur. N. S. 854; 27 L. J., M. C. 307. Conviction under sect. 24, *Ellis v. Woodbridge*, 29 *Id.* 183. Diversion of highway, *Wright v. Frant*, 4 B. & S. 118; 32 L. J., M. C. 204; *R. v. Midgeley*, 33 *Id.* 188.

(*b*) See *R. v. James and others*, 9 Jur. N. S. 1126; 32 L. J., M. C. 211; *R. v. Haslemere*, *Id.* 30.

(*c*) See *George v. Chambers*, *suprà*.



informer, and half to the surveyor of the parish, to be applied towards the repair of the highways; but if the surveyor is the informer, then the whole is to be applied towards the repair of the highway (a).

By sect. 104, a distress is not to be deemed unlawful for want of form in any proceedings relating thereto. Distress.

By sect. 105, an appeal is given to the quarter sessions (b); Appeal. and by sect. 107, no proceeding touching the conviction of any offender is to be quashed or vacated for want of form, or removable by *certiorari*, unless (by sect. 108) the sessions grant a special case for the opinion of the Court of Queen's Bench (c). Certiorari.

By sect. 118, the forms of proceedings under the act, which are set forth in the schedule, are directed to be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case (d); and no objection shall be made, or advantage taken, for want of form in any such proceeding. Forms of proceedings.

#### TURNPIKE ROADS.

By the 3 Geo. 4, c. 126, all further turnpike acts are repealed, and the law respecting turnpike roads is consolidated by that act and the subsequent acts of 4 Geo. 4, c. 95; 7 & 8 Geo. 4, c. 24, and 9 Geo. 4, c. 77.

The 148th section of the 3 Geo. 4, c. 126, declares that the forms of proceeding set forth in the schedule may be used upon all occasions, with such additions and variations only as may be

(a) See *Sellwood v. Mount*, 1 Q. B. 726; *Lock v. Sellwood*, *Id.* 736; *R. v. Pembroke*, 3 Q. B. 901.

(b) See, as to notice of appeal, *R. v. St. Albans*, 3 B. & C. 698; *R. v. JJ. Beds.*, 11 A. & E. 134; *R. v. JJ. West Riding of Yorksh.*, 1 Q. B. 624; *R. v. JJ. North Riding of Yorksh.*, 7 Q. B. 154; *R. v. JJ. Devon*, 1 M. & S. 111; *R. v. Lancashire*, 8 B. & C. 593; *R. v. JJ. Lancaster*, 27 L. J., M. C. 161. There is an appeal to the Quarter Sessions from the decision of the special sessions, determining, under the proviso in sect. 25, as to the utility of a highway proposed to be dedicated to the public, *R. v. JJ. Derbysh.*, El., Bl. & El. 69; 27 L. J., M. C. 189.

(c) See *R. v. Shiles*, 1 Q. B. 919.

(d) See *R. v. Casson*, 3 D. & R. 40; *Davidson v. Gill*, 1 East, 64; *Goss v. Jackson*, 3 Esp. 198. See, as

to justice removing driver in order to ascertain the name of the owner of a waggon, *Jones v. Owen*, 2 D. & R. 600. See *Morgan v. Leach*, 10 M. & W. 598, conviction of surveyor for not removing nuisance from the highway. See also *Mould v. Williams*, 5 Q. B. 469, for not repairing highway, *R. v. Arnould*, 27 L. J., M. C. 92. The use of locomotives on turnpike and other roads for agricultural and other purposes, is regulated by 24 & 25 Vict. c. 70, and 28 & 29 Vict. c. 83. The provision in sect. 70 of 5 & 6 Will. 4, c. 50, against erecting steam-engines, &c., within twenty-five yards of a highway (unless it is concealed so as not to be dangerous to passengers, &c.), is extended to turnpike roads by 27 & 28 Vict. c. 75; see 28 & 29 Vict. c. 83, s. 6, and *Smith v. Stokes*, 4 B. & S. 84; 32 L. J., M. C. 199.

necessary to adapt them to the particular exigencies of the case, and that no objection shall be taken for want of form (a).

By sect. 143, penalties not exceeding 20*l.* may be recovered before a single justice (b), which, by sect. 141, are directed to be paid, half to the informer and half to the treasurer to the trustees of the road, to be applied for the purposes of the road.

The 4 Geo. 4, c. 95, s. 87, gives an appeal to the sessions, and declares that no proceeding under the act shall be quashed or vacated for want of form, or be removed by certiorari (c).

1. *Information against a Person, for Riding on the Footpath, under 3 Geo. 4, c. 126, s. 121.*

That G. P., of &c., on &c., at                   aforesaid, did unlawfully and wilfully ride upon a certain footpath and causeway, by the side of a certain turnpike road there situate, called the                   road, and made and set apart for the use and accommodation of foot passengers passing and travelling along the said road, contrary to the statute made in the third year of the reign of King George the Fourth, intituled "An Act for regulating Turnpike Roads," which hath imposed a forfeiture not exceeding 40*s.* for the said offence, over and above the damage occasioned thereby.

Taken at                   , in                   , in the county of                   , this  
day of                   , 18                   , before me,

D. M.

2. *Conviction of a Party, for not Cleansing a Ditch, adjoining the Road; under the 113th Section of 3 Geo. 4, c. 126.*

A. B., of                   , in the said county, yeoman, is convicted before me, J. N., esq., one of her majesty's justices of the peace in and for the said county, for that he, the said A. B., being then and there a person occupying certain lands and grounds adjoining to and lying near a certain turnpike road there situate, called the                   turnpike road, through which said lands and grounds the water hath used to pass from the said turnpike road, did not, after ten days' notice to him in that behalf duly given by G. M., the surveyor of the said turnpike road, or at

(a) See *Barnes v. White*, 1 C. B. 192.  
(b) *R. v. JJ. Hants*, 1 B. & Ad. 654.

(c) *R. v. Norwich*, 5 A. & E. 563;  
*R. v. Middlesex*, 2 Dowl. N. S., 719;  
*R. v. Yorkshire, W. R.*, 5 B. & Ad. 1003; *R. v. JJ. Hants*, *suprà*. When a turnpike road is out of repair the

proper person to be summoned before justices, under sect. 94 of 5 & 6 Will. 4, c. 50, is the treasurer or surveyor or other officer of the turnpike road, *Re Surveyors of Garton*, 25 L. J., M. C. 70. Nuisances on turnpike roads, see 27 & 28 Vict. c. 75.

any time before the expiration of such notice, well and sufficiently cleanse and scour the ditches, watercourses and drains for such water to pass without obstruction, contrary, &c. And I do hereby declare and adjudge, that the said A. B. hath forfeited for the said offence the sum of 3*l.* (a), to be distributed as the law directs, according to the form of the statute in that case made and provided.

Given, &c.

### 3. *Convictions under the 41st Section of 3 Geo. 4, c. 126, for evading the Payment of Toll (b).*

That he, the said A. B., on the            day of           , in the year aforesaid, at           , in the said county, did, with a certain horse, which the said A. B. was then and there riding, go off and pass from a certain turnpike road there situate, called the            road, through and over certain land and ground near and adjoining thereto, not being a public highway, and he, the said A. B., not being the owner or occupier of such land and ground, with intent to evade the payment of the toll of one penny in respect of the said horse, granted by a certain act of parliament, made and passed in the            year of the reign of king           , intituled "An Act" [&c., *here set forth the title of the local turnpike act, under which the toll was payable*]; by reason whereof the payment of the said toll of one penny was unlawfully and wilfully avoided by the said A. B., contrary to the statute made in the third year of the reign of King George the Fourth, intituled [&c., *as in the last precedent to the end, the penalty being the same*].

### 4. *Conviction (under the 55th Section) of a Toll Collector, for taking excessive Toll (c).*

That he, the said A. B., on the            day of           , in the year aforesaid, at           , in the said county, being then and there the collector of tolls at a certain gate called the

(a) The penalty is, by sect. 113, not exceeding 5*l.*

(b) See *Barnes v. White*, 1 C. B. 192; *Veitch v. Trustees of Exeter Road*, 8 El. & Bl. 986; 27 L. J., M. C. 116; *Horwood v. Powell*, 30 Id. 203; *R. v. Garrard*, 3 Jur. N. S. 341; 26 L. J., M. C. 148; 4 & 5 Vict. c. 33.

(c) See *R. v. Hamlyn*, 4 Camp. 379; *R. v. Freke*, 2 Jur., N. S. 162. Conviction for taking toll for steam-engine, part of thrashing machine, *R. v. Matty*, 8 El. & Bl. 712; 27 L. J., M. C. 59. Exemption of carts carrying manure, 5 & 6 Will. 4, c.

18, s. 1; *Rickens v. Wiggens*, 3 B. & S. 953; 32 L. J., M. C. 144; *R. v. Freke*, 5 El. & Bl. 944; 25 L. J., M. C. 64. Carrying fodder for cattle, *Clements v. Smith*, 30 Id. 16; 6 Jur. N. S. 1149. Repassing gate, *Short v. Hudson*, 5 H. & N. 559; 29 L. J., M. C. 208; and see *Johnson v. Cocksedg*, 27 Id. 314. Clergyman on parochial duty, *Temple v. Dickinson*, 1 El. & El. 34; 28 L. J., M. C. 10. Taking toll for the Queen's carriages, *Westover v. Perkins*, 2 El. & El. 57; 28 L. J., M. C. 227.

toll gate, upon a certain turnpike road there situate, called the road from                    to                   , did take from one D. S. the sum of                   , as and for the toll of two horses which the said D. S. was then and there driving, for passing through the said gate; the same being a greater toll than what was then authorized and directed in that behalf by a certain statute made and passed in the                    year of the reign of King                   , intituled "An Act" [&c., *here set forth the title of the local turnpike act, under which the toll was payable*], and contrary to the form of the statute [&c., *as in Form No. 6 to the end; but observing that the pecuniary penalty is in this case neither more nor less than 5l., and that the agreement for renting the tolls may, if the trustees or commissioners shall think fit to vacate the same, be declared to be null and void*].

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5. *Conviction under a Local Turnpike Act of a Toll Gate Keeper, for exacting Toll for Sheep driven to Pasture from one Parish to the next adjoining, in the same County, pursuant to the Form of Conviction given by the Act (a).*

He, the said C. D., being then and there the farmer of the tolls payable at a certain toll gate or bar, called Spittlegate Bridge Bar, in Spittlegate aforesaid, within the parts of Kesteven aforesaid, did unlawfully demand and take of and from one A. B. certain toll, to wit, the sum of 1s. 4d. of lawful money of Great Britain, as and by way of toll for certain cattle, to wit, sixty-four sheep, which were then and there going to pasture, and driven from the parish of Grantham aforesaid to the parish of Sowerby, in the county aforesaid, being the next adjoining parish to the said parish of Grantham, and which said sheep did not pass upon the road hereinafter next mentioned more than two miles in going to pasture as aforesaid; contrary to an act passed in the forty-fourth year of the reign of his majesty King George the Third, intituled "An Act" [&c., *set out the title of the act exactly*].

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### HORSE-SLAUGHTERING.

*Conviction under 12 & 13 Vict. c. 22, s. 7, for not affixing Name, &c., to Licensed Premises.*

Then being duly licensed for slaughtering horses under the provisions of the statute in that behalf, and keeping and using a certain house there situate for the purpose of slaughtering horses, did not paint or affix or cause to be painted or affixed over the door or gate of the said house [*or place, as the case may be*] where he then carried on the business of slaughtering horses,

(a) See 1 & 2 Will. 4, c. 25, s. 1, and *Warmby v. Deakin*, 14 C. B., N. S. 124; 32 L. J., M. C. 201.

in large legible characters, his name, together with the words "Licensed for Slaughtering Horses pursuant to an Act passed in the Twenty-sixth Year of his Majesty King George the Third," but neglected and omitted so to do, contrary, &c. (a).

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## HUSBAND AND WIFE.

[Orders of justices for protecting the property of a wife deserted by her husband, 27 & 28 Vict. c. 44. See *Ex parte Sharpe*, 33 L. J., M. C. 152; and *In re Whittingham*, 10 Jur., N. S. 818.]

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## INCLOSURES (b).—(See MALICIOUS INJURIES.)

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## INDUSTRIAL SCHOOLS.

20 & 21 Vict. c. 48; 23 & 24 Vict. c. 108.

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## INDUSTRIAL AND PROVIDENT SOCIETIES.

25 & 26 Vict. c. 87 (c).

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## INLAND REVENUE.—(See EXCISE.)

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## JUVENILE OFFENDERS (d).—(See LARCENY.)

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## LANDLORD AND TENANT.

### I. FRAUDULENT REMOVAL OF GOODS.

*Form of Order of two Justices, for the fraudulent Removal of Goods by a Tenant, under 11 Geo. 2, c. 19, ss. 3 and 4 (e).*

to wit. } Whereas a certain complaint in writing (f) has been  
duly made and exhibited before us, S. H. and

(a) And see 12 & 13 Vict. c. 92, s. 8, as to not immediately cutting off the hair from the neck of a horse sent to be slaughtered, and not killing the same within three days, &c. See also *R. v. Harris*, 4 T. R. 202; and "Cruelty to Animals."

(b) See *Chilcote v. Youldon*, 3 El. & El. 7; 29 L. J., M. C. 197; under 15 & 16 Vict. c. 79, s. 13.

(c) See *Toutill v. Douglas*, 33 L. J., Q. B. 66, and *Dean v. Mellard*, 32 L. J., C. P. 282.

(d) As to sending vagrant children to industrial schools, see 20 & 21 Vict. c. 48, s. 5 *et seq.*; see also 23 & 24 Vict. c. 108.

(e) See *R. v. Morgan*, Cald. Cas. 156; *R. v. Middlehurst*, 1 Burr. 399; *R. v. Bissex*, Sayer, 304; 1 Burn, 538. The justices are to determine whether the removal was *bond fide* or fraudulent; *Coster v. Wilson*, 3 M. & W. 411.

(f) *R. v. Fuller*, 2 D. & L. 98; *Coster v. Wilson*, 3 M. & W. 411.

B. N. C., esquires, two of the justices of our lady the present queen, assigned to keep the peace, &c., residing near to the said premises from whence the goods and chattels hereinafter mentioned were removed (we, or either of us, not being interested in the said premises, or any part thereof) by T. P. (a), of the city of , apothecary, against J. D., late of , in the said county of , yeoman, by which he, the said T. P., giveth us to understand and be informed, that H. F., before and at the time when the said goods and chattels were conveyed away as hereinafter mentioned, enjoyed certain tenements with the appurtenances, lying and being at , in the said county, as tenant thereof, under and by virtue of a certain demise, which theretofore, and before the rent hereinafter mentioned to be due became so due and in arrear as hereinafter set forth, had been made by the said T. P., at and under the yearly rent of 8*l.*, payable half-yearly, to wit, upon the twenty-ninth day of September and the twenty-fifth day of March in every year, during the continuance of the said demise; and that, upon the twenty-ninth day of September now last past, the sum of 4*l.*, parcel of the said rent of the said demise, for half a year ended on that day in that year, at the time of the offence hereinafter mentioned, was and remained and yet is due and in arrear to the said T. P., under and by virtue of the said demise; and that, whilst the same was so due and in arrear (b) as aforesaid, to wit, on the twenty-first day of March now last past, the goods and chattels of the said H. F., to wit, three beds, &c. (c), and certain other goods and chattels of the said H. F., under the value of 50*l.*, that is to say, of the value of 5*l.*, were then upon the said demised premises, and were then subject and liable to be taken as a distress for the said arrear of rent so reserved due and payable as aforesaid; and that the said H. F., to prevent the said T. P. from distraining the said goods and chattels for the said arrear of rent so reserved due and payable as aforesaid, afterwards, that is to say, on the same day and year aforesaid, at the city of , aforesaid, fraudulently (d) removed and conveyed away the said goods off and from the said demised premises; and that the said J. D., well knowing the premises, did wilfully and knowingly (e) aid and assist the said H. F. in the fraudulent conveying away the said goods and chattels off

(a) The complaint must be by the landlord, or his bailiff, servant or agent; *R. v. Davis*, 5 B. & Ad. 551; *R. v. Fuller*, *supra*.

(b) The rent is due and payable on the rent-day, so that a removal on that day may be fraudulent within the statute; *Dibble v. Bowater*, 2 El. & Bl. 564; 17 Jur. 1054; 22 L. J.,

Q. B. 396.

(c) The particular goods need not be specified; *R. v. Rabbits*, 6 D. & R. 341.

(d) Or "clandestinely."

(e) "Wilfully and knowingly" are here essential words; *R. v. JJ. Radnorsh.*, 9 Dowl. 90.

and from the said demised premises: and thereupon we, the said justices, having summoned the said J. D. to attend us thereon, to answer the said complaint, and the said J. D. having attended accordingly, and we, in the presence of the said J. D., having heard and examined the witnesses produced by the said T. P. upon oath, and having heard what was alleged by the said J. D. in his defence, do, this            day of           , in the year of our Lord           , at            aforesaid, determine and adjudge, that the said J. D. is guilty of the premises above laid to his charge, in manner and form as by the said complaint is above alleged; and that the said goods and chattels in the said complaint mentioned, and so fraudulently removed and conveyed away as aforesaid, were of the value of 5*l.* of lawful money of this realm. Therefore it is considered by us, the said justices, and we, the said justices, do order and adjudge that he, the said J. D., do pay to the said T. P. the sum of 13*l.* of like lawful money, on the            day of            now next ensuing, being double the value of the said goods and chattels in the said complaint mentioned, according to the form of the statute in such case made and provided. In witness whereof we, the said justices, have hereunto put our hands and seals, this            day of           , in the year of our Lord            (a).

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## II. RECOVERY OF POSSESSION OF TENEMENTS AFTER DUE DETERMINATION OF TENANCY, UNDER 1 & 2 VICT. c. 74.

[Forms of proceedings under this act are given in the schedule to the statute. By its provisions, when the interest of a tenant at will or for any term not exceeding seven years, where there is no rent reserved, or a rent not exceeding 20*l.* a year<sup>(b)</sup>, and no fine has been reserved or made payable, shall have ended or been duly determined, and he or the occupier refuses to give possession, the landlord may give him notice of his intention to proceed to recover possession under the act, and if the tenant or occupier does not appear, or fails to show cause why he does not give possession, the

(a) The above order was drawn by the late Mr. Justice *Holroyd* when at the bar. If the order be made against the aider as well as the principal, the fine should be severed against each defendant, and not be jointly awarded. See 2 Hawk. c. 10, s. 16; *Morgan v. Brown*, 4 A. & E. 515; 6 Nev. & M. 57; *ante*, p. 264. As to justices giving possession of deserted premises, and restitution being ordered by the judges of assize, see 11 Geo. 2, c. 19, ss. 16, 17, and *R. v. Sewell*, 8 Q. B. 161; *Ashcroft v. Bourne*, 3 B. & Ad. 684; *R. v. Traill*, 12 A. & E. 761.

(b) See 9 & 10 Vict. c. 95, s. 122, as to recovering possession where the rent does not exceed 50*l.* a year. The rent is the criterion, although the annual value may be more; *Earl of Harrington v. Ramsay*, 2 El. & Bl. 669; 22 L. J., Q. B. 460; *S. C.* in Exchequer, 8 Exch. Rep. 879; 22 L. J., Ex. 326. See 3 & 4 Vict. c. 84, s. 13, when the premises are within the Metropolitan district; and *Edwards v. Hodges*, 24 L. J., M. C. 81. See *R. v. Wilson*, 3 A. & E. 817, as to a conviction by justices for a forcible detainer.

justices may issue their warrant directing the constables and peace officers of the district within which the premises are situate (a) to give possession to the landlord (sect. 1). The notice of application may be served personally, or by leaving the same with some person apparently residing on the premises, and is to be read over and explained by the person serving it; if such service cannot be effected, it is to be posted on some conspicuous part of the premises (sect. 2). If the party obtaining the warrant had not then lawful right to the possession, the obtaining the warrant is to be deemed a trespass against the tenant or occupier, although no entry be made (b); but the justices and officers are protected. The tenant, by giving sureties, may stay execution of the warrant (sects. 3, 5) (c).]

### LANDS CLAUSES CONSOLIDATION ACT.

[8 Vict. c. 20, s. 121. See *Knapp v. London, Chatham and Dover Railway Company*, 32 L. J., Exch. 237, and *ante*, pp. 49, 21, n. (k); 28.]

### LARCENY.

18 & 19 Vict.  
c. 126.

By stat. 18 & 19 Vict. c. 126 (d), intituled "An Act for diminishing Expense and Delay in the Administration of Criminal Justice in Certain Cases," a summary jurisdiction is given to magistrates in petty sessions to try, by consent of the prisoner, charges of simple larceny, where the value of the property stolen does not exceed 5s., and of attempts to commit simple larceny or larceny from the person, whatever may be the value of the property attempted to be stolen. This jurisdiction, however, is not to be exercised, first, if the person charged do not consent thereto; secondly, if it appear to the justices that the offence is one which, owing to a previous conviction, is punishable by law with transportation or penal servitude; and thirdly, if they are of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment. They may moreover dismiss the person charged without proceeding to a conviction (sects. 1, 2). An enlarged jurisdiction is also conferred by the third section on magistrates in cases where the accused pleads guilty to the charge. The accused may make his full defence and examine the witnesses by counsel or attorney (sect. 4). The justices may remand the case to the next petty sessions, and in the meantime, if they

(a) See *Jones v. Chapman*, 14 M. & W. 124.

(b) See *Darlington v. Pritchard*, 4 M. & G. 783, and *Edmunds v. Piniger*, 7 Q. B. 558.

(c) Where the rent does not exceed 50l.

(d) This statute is not repealed or

affected by the Criminal Law Consolidation Acts (24 & 25 Vict. cc. 96, &c.; see *ante*, p. 154). The section relating to fraudulent bailees in 24 & 25 Vict. c. 96, does not extend to any offence punishable on summary conviction, see sect. 4.



think fit, admit the accused to bail (sects. 5, 6). Restitution of property may be ordered in those cases in which it might be ordered after trial upon indictment (sect. 8). The expenses of the prosecutor and his witnesses may also be directed to be paid (sect. 14). The petty sessions holden for the purpose of the act to be an open public court, and notice of its holding is to be given (sect. 10). The conviction or duplicate of certificate of dismissal with the written charge, the depositions of the witnesses, and the statement of the accused, are to be transmitted to the next general or quarter sessions (sect. 7). The conviction is not to be attended with forfeiture, nor to be quashed for want of form, and no warrant of commitment thereon is to be held void for any defect, if it be therein alleged that the offender has been convicted and there be a valid conviction to sustain it (sect. 13). The stat. 11 & 12 Vict. c. 43, is not to apply to proceedings under the act, and the statute is not to extend to Scotland (sects. 9, 24). No appeal is given by the statute. By sect. 22, in cases of injury to property, parties aggrieved may receive compensation, although examined as witnesses.

The following are the principal provisions of this statute at length:—

Sect. 1. Where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such justices, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months, and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A.) and (B.) in the schedule to this act, or to the like effect: provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall,

Power to justices at petty sessions to punish persons charged with larceny, &c. summarily.

If parties accused do not consent, justices to deal with cases as if this act had not passed.

instead of summarily adjudicating thereon, deal with the case in all respects as if this act had not been passed: provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

Justices to ask the accused whether he consents to the charge being summarily determined.

Sect. 2. Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provision, one of such justices, after the examination of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes" (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence the justices shall hear such defence, and then proceed to dispose of the case summarily.

Persons charged with larceny, &c. may plead guilty before justices in petty sessions, and be sentenced forthwith.

Sect. 3. Where any person is charged before any justices at such petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the form (C.) in the schedule to this act, or to the like effect:

provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course.

Justices to warn accused that he is not obliged to plead.

Sect. 4. In every case of summary proceeding under the act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Persons accused may have assistance of counsel, &c.

Sect. 5. Where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under the act passed in the session holden in the eleventh and twelfth years of her majesty, chapter forty-two, section twenty-one (a), or under the Petty Sessions Act (Ireland), 1851, section fourteen.

Power to remand persons charged to next petty sessions.

Sect. 6. If any person suffered to be at large, upon entering Forfeited re-

(a) By 11 & 12 Vict. c. 42, s. 21, the remand may be from time to time by warrant for such period as by the justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house or place of security in the county, &c., for which such justice shall then be acting; or if the remand be for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused may then be, or any other constable or person to be named by the justice in that behalf, to continue or keep the accused in his custody, and to bring him before the same or such other justice as shall be there acting at the time appointed for continuing such examination. It is then provided, that any such justice may order the accused to be brought before him, or before any other justice for the same county, &c., at any time before the expiration of the time for which the accused shall be so remanded, and the officer in whose custody he shall then be shall duly

obey such order: it is also further provided, that, instead of detaining the accused in custody during the period for which he shall be so remanded, any one justice before whom such accused party shall so appear or be brought as aforesaid may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if the accused shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice, or any other justice then and there present, upon certifying on the back of the recognizance the non-appearance of the accused, may transmit such recognizance to the clerk of the peace of the county, &c., within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.

cognizances to be transmitted to the clerk of the peace.

into such recognizance as the justice or justices are authorized under the last-mentioned act to take on the remand of a party accused, do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such nonappearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance.

Convictions and other proceedings to be returned to the quarter sessions.

Sect. 7. The justices adjudicating under this act shall transmit the conviction or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of general or quarter sessions for the county or place, there to be kept by the proper officer among the records of the court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever.

Justices may order restitution of property.

Sect. 8. It shall be lawful for the justices by whom any person is convicted under this act to order restitution of the property stolen, taken or obtained by false pretences in those cases in which the court, before whom the person convicted would have been tried but for this act, may be by law authorized to order restitution (a).

Petty sessions to be an open court, and held for petty sessional division.

Sect. 9. Every petty sessions for the purposes of this act shall be an open public court, and shall be the petty sessions holden for a petty sessional division (b); and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

11 & 12 Vict. c. 43, not to apply to proceedings under this act.

Sect. 10. The provision of the act of the session holden in the eleventh and twelfth years of her majesty, chapter forty-three, shall not be construed as applying to any proceeding under this act.

Effect of conviction.

Sect. 11. Every conviction by justices in petty sessions under

(a) By 24 & 25 Vict. c. 96, s. 100, the owner of property stolen, embezzled or obtained under false pretences, prosecuting the thief to conviction, may, except in the few instances therein mentioned, have restitution of his property; see *R. v. Powell*, 7 C. & P. 640; *R. v. Stanton*, *Id.* 431, and *ante*, p. 283. It seems to be imperative to order restitution;

see Criminal Law Consolidation Acts, by Davis, p. 100, n. (b).

(b) But this provision is not to apply to petty sessions holden in or for the liberties of the Cinque Ports or any part thereof, or to any other liberty or place not forming and not being within a petty sessional division; 19 & 20 Vict. c. 118, s. 1.

this act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this act shall be attended with any forfeiture.

Sect. 12. Every person who obtains a certificate of dismissal or is convicted under this act shall be released from all further or other criminal proceedings for the same cause.

Proceedings under this act a bar to further proceedings.

Sect. 13. No conviction, sentence or proceeding under this act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

No conviction to be quashed for want of form.

Sect. 14. Where any charge is summarily adjudicated upon under this act, or an offender is under this act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation, which such justices may deem reasonable for his expenses, trouble and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall, when granted in England, have the effect of an order of court for the payment of the expenses of a prosecution made under the act of the seventh year of King George the Fourth, chapter sixty-four, and the acts amending the same (a), and when granted in Ireland shall have the effect of an order of court for the payment of the expenses of a prosecution made under the act of the fifty-fifth year of King George the Third, chapter ninety-one, and the acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of court; and all certificates to be granted under this act shall be subject to the like regulations made or to be made in relation thereto as the certificates mentioned in the said act of the seventh year of King George the Fourth, to be granted by examining magistrates, are or may be subject to under the act of the session holden in the fourteenth and fifteenth years of her majesty, chapter fifty-five: provided also, that the amount of the fees payable to the clerks of the magistrates in petty sessions, in respect of any proceeding under this act, and of the fees payable to the clerks of the peace for filing the depositions, conviction or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when

Justices may order payment of expenses.

(a) 7 Geo. 4, c. 64, ss. 22, 23, and 14 & 15 Vict. c. 55.

incurred before a commitment for trial may be added to the certificate for compensation aforesaid, and paid in the like manner.

Town hall, court house, &c. of county, city or borough may be used for petty sessions held under this act.

Sect. 15. In every city, borough, town or place in England, where any petty sessions shall be holden under this act, the town hall, court house, or other public building therein belonging to any county, city, borough, town or place, or any court house in such city, borough, town or place, provided by the commissioners of her majesty's treasury, under the act of the session holden in the ninth and tenth years of her majesty, chapter ninety-five, may be used for the purpose of holding such petty sessions, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of holding such courts of petty sessions, and for all other expenses necessarily incidental to the use of the said building for the purposes of the said courts: provided always, that the necessary arrangements shall be made so that the sittings of the said courts of petty sessions shall not interfere with the business of the county, city, borough, town or place, or other business usually transacted in such town hall, court house, or other public building, or any purpose for which any such town hall, court house, or other public building may be used by virtue of any act of parliament in that behalf.

Any metropolitan police magistrate or stipendiary magistrate may act alone.

Sect. 16. Any one of the magistrates appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, or any magistrate appointed to act at the police courts of the Dublin metropolitan district, and sitting at a police court within the said district, or any stipendiary magistrate appointed for any city, town, liberty, borough or district, and sitting at a police court or other place appointed in that behalf, may, in the case of persons charged before such magistrate, do alone all acts by this act authorized to be done by justices of the peace in petty sessions, and all the provisions of this act referring to justices in petty sessions shall be read and construed as referring also to such magistrate.

Nothing to affect provisions of 10 & 11 Vict. c. 82, and 13 & 14 Vict. c. 37.

Sect. 17. Nothing in this act shall affect the provisions of the act of the session holden in the tenth and eleventh years of her majesty, chapter eighty-two, "For the more speedy Trial and Punishment of Juvenile Offenders" (a), or of the act of the session holden in the thirteenth and fourteenth years of her majesty, chapter thirty-seven, "For the further Extension of summary Jurisdiction in Cases of Larceny" (b), or of the Summary Jurisdiction (Ireland) Act, 1851; and this act shall not extend to persons punishable under the said acts, so far as regards offences for which such persons may be punished thereunder.

(a) See *post*, p. 629.

(b) *Id.*

Sect. 18 relates to compensation to clerks of peace and other officers.

Sect. 19 gives power to increase the salary of the chief metropolitan police magistrate to a sum not exceeding 1,500*l*.

Sect. 20 extends to the whole office of clerk of assize, &c. the provisions of 15 & 16 Vict. c. 73, for payment by salary in lieu of fees to clerks of assize for their duties as associates.

Sect. 21 repeals so much of 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12, &c., as directs payment of wages to justices and their clerks.

Sect. 22. And whereas it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property : In cases of injuries to property, parties aggrieved may receive compensation, though examined as witnesses.  
Be it further enacted, that in all cases where any justice or justices of the peace have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal (*a*), the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

Sect. 23. In the interpretation of this act "county" shall be construed to include riding, parts, liberty and division of a county ; "borough" to include city, county of a city or town, and town corporate ; "property" to include everything included under the words "chattel, money, or valuable security," as used in the act of the session holden in the seventh and eighth years of King George the Fourth, chapter twenty-nine ; and in case of any "valuable security" the value of the share, interest or deposit to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security. Interpretation of terms.

Sect. 24. This act shall not extend to Scotland.

Extent of act.

The schedule contains the three following forms (A.), (B.), and (C.)

#### FORM (A).

##### *Conviction.*

{ Be it remembered, that on the            day of            , in  
to wit. } the year of our Lord            , at            , in the said  
[county], A. B. being charged before us the undersigned  
of her majesty's justices of the peace for the said [county],  
and consenting to our deciding upon the charge summarily, is  
convicted before us, for that [he the said A. B., &c., stating the  
offence, and the time and place when and where committed]; and we

(a) See *post*, p. 633.

adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at                      in the said [county], [and there kept to hard labour] for the space of                      .

Given under our hands and seals, the day and year first above mentioned at                      in the [county] aforesaid.

J. S. (L.S.)

H. M. (L.S.)

#### FORM (B).

##### *Certificate of Dismissal.*

to wit. } We,                      of her majesty's justices of the peace for  
          } the [county] of                      , certify, that on the                      day  
of                      , in the year of our Lord                      , at                      , in the said  
[county], A. B. being charged before us, and consenting to our  
deciding upon the charge summarily, for that [he the said A. B.,  
*stating the offence charged, and the time and place when and where  
alleged to be committed*], we did, having summarily adjudicated  
thereon, dismiss the said charge.

Given under our hands and seals, this                      day of                      ,  
at                      in [county] aforesaid.

J. S. (L.S.)

H. M. (L.S.)

#### FORM (C).

##### *Conviction upon a Plea of Guilty.*

to wit. } Be it remembered, that on the                      day of                      ,  
          } in the year of our Lord                      , at                      in the said  
[county], A. B. being charged before us the undersigned  
of her majesty's justices of the peace for the said [county], for  
that [he the said A. B., &c., *stating the offence, and the time and  
place when and where committed*], and pleading guilty to such  
charge, he is thereupon convicted before us of the said offence;  
and we adjudge the said A. B. for his said offence to be im-  
prisoned in the [house of correction] at                      in the said [county],  
[and there kept to hard labour] for the space of                      .

Given under our hands and seals, the day and year first above mentioned, at                      in the [county] aforesaid.

J. S. (L.S.)

H. M. (L.S.)

#### 1. *Conviction under 18 & 19 Vict. c. 126, s. 1, for simple Larceny, the Property not exceeding 5s. in Value.*

[Commence as in form (A) at p. 627] at &c., on &c., did feloniously steal, take and carry away one pair of shoes, being of a value not exceeding 5s., to wit, of the value of 3s., the goods and chattels of one C. D.



2. *Conviction under same Section for having attempted to commit simple Larceny.*

[Commence as in last form] at &c., on &c., did unlawfully attempt then and there feloniously to steal, take and carry away one gold watch of the value of 10*l.*, the goods and chattels of one C. D.

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3. *Conviction under same Section for having attempted to commit Larceny from the Person.*

[Commence as in last form] at &c., on &c., did unlawfully attempt then and there feloniously to steal, take and carry away from the person of one C. D. a gold watch of the value of 10*l.*, the goods and chattels of the said C. D.

[By 26 & 27 Vict. c. 103, if any servant shall contrary to his master's orders take from his possession any corn, pulse, roots or other food for the purpose of giving it to any horse or other animal belonging to his master, he shall not be proceeded against for felony, but on conviction before two justices may be imprisoned or fined, or he may be dismissed without conviction, if the justices deem the charge to be too trifling, &c. See *post*, p. 639.]

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JUVENILE OFFENDERS.

By 10 & 11 Vict. c. 82, every person charged with having committed or attempted to commit, or with having aided, &c., in the commission of simple larceny, or any offence punishable as simple larceny, and whose age at the time of committing the offence does not in the opinion of the justices before whom he or she appears exceed the age of sixteen years (13 & 14 Vict. c. 37), on conviction before any two justices in petty sessions at the usual place, and in open court, may be imprisoned with or without hard labour for any term not exceeding three calendar months, or in the discretion of the justices shall forfeit a sum not exceeding 3*l.* (a), or if a male and of an age not exceeding fourteen years (13 & 14 Vict. c. 37), shall be once privately whipped, either instead of or in addition to the imprisonment. The justices may dismiss the accused without punishment or leave the case for prosecution by indictment, and if the accused or his parent (13 & 14 Vict. c. 37) object to the case been summarily disposed of, they are not to exercise summary jurisdiction (sect. 1). *Certiorari* is taken away (sect. 10) (b); restitution of property may be ordered (sect. 12); recovery of penalties (sect. 13); payment of expenses of prosecutions may be ordered (sects. 14, 15).

(a) See 28 & 29 Vict. c. 127, ante, p. 543.

convictions to Quarter Sessions, is repealed by 21 & 22 Vict. c. 67.

(b) Sect. 11, requiring a return of

See also 17 & 18 Vict. c. 86; 18 &

The schedule contains the two following forms :—

*Form of Certificate of Dismissal.*

to wit. } We,                      of her majesty's justices of the peace  
          } for the county of            [or I, a magistrate of the  
police court of           , *as the case may be*], do hereby certify, that  
on the            day of            in the year of our Lord           , at  
          in the said county of           , M. N. was brought before  
us the said justices [or me the said magistrate] charged with the  
following offence (that is to say), [*here state briefly the particulars  
of the charge*], and that we the said justices [or I the said magis-  
trate] thereupon dismissed the said charge.

Given under our hands [or my hand] this            day of           .

*Form of Conviction.*

to wit. } Be it remembered, that on the            day of           , in  
          } the year of our Lord one thousand eight hundred  
and           , at            in the county of            [or riding, division,  
liberty, city, &c., *as the case may be*], A. O. is convicted before  
us J. P. and Q. R., two of her majesty's justices of the peace  
for the said county [or riding, &c.], [or me, S. T., a magistrate  
of the police court of           , *as the case may be*], for that he the  
said A. O. did [*specify the offence, and the time and place when  
and where the same was committed, as the case may be, but without  
setting forth the evidence*], and we the said J. P. and Q. R. [or I  
the said S. T.] adjudge the said A. O. for his said offence to be  
imprisoned in the            [or to be imprisoned in the            and  
there kept to hard labour for the space of            (a), [or we (or I)  
adjudge the said A. O. for his said offence to forfeit and pay  
(*here state the penalty actually imposed*), and in default  
of immediate payment of the said sum, to be imprisoned in the  
          , [or to be imprisoned in the            and there kept to hard  
labour] for the space of (b)           , unless the said sum shall be  
sooner paid.

Given under our hands and seals [or my hand and seal] the  
day and year first above mentioned.

19 Vict. c. 87; 19 & 20 Vict. c. 109,  
and 20 & 21 Vict. c. 55, relating  
to reformatory schools for juvenile  
offenders. See also 1 & 2 Vict. c. 82  
and 5 & 6 Vict. c. 98, s. 12 (Park-  
hurst Prison); 20 & 21 Vict. c.  
48, and 23 & 24 Vict. c. 108 (In-  
dustrial Schools).

(a) See form of conviction, when  
the offender is to be sent to a refor-  
matory school at the expiration of  
his sentence, 19 & 20 Vict. c. 109,  
schedule.

(b) See 28 & 29 Vict. c. 127,  
*ante*, p. 543.

1. *Conviction under 10 & 11 Vict. c. 82 (amended by 13 & 14 Vict. c. 37), of a Person not exceeding Sixteen Years of Age for simple Larceny.*

Then being under the age of sixteen years, to wit, of the age of twelve years, is convicted before the undersigned two of her majesty's justices, &c., for that the said A. B. did, on &c., at &c., feloniously steal, take and carry away,\* [or did then and there unlawfully attempt and endeavour then and there feloniously to steal, take and carry away] one coat of the value of \_\_\_\_\_, of the goods and chattels of one C. D.

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2. *Conviction under same Section for Stealing in a Garden after a previous Conviction.*

To \* in preceding Form, then] from a certain garden of one C. D., there situate, twenty apples, the property of the said C. D., and then and there growing, contrary, &c., he the said A. B. having been before convicted of the like offence.

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3. *Conviction under, where Imprisonment with or without Whipping is adjudged.*

State after the description of the justices, that the conviction took place "in petty sessions assembled at the usual place and in open court," and when whipping is adjudged, state that the age of the offender does not exceed fourteen years, and that he is "to be once privately whipped during such imprisonment, the whipping to be with a cane, &c. [specifying the instrument], and strokes to be inflicted [specifying the number of strokes]" (a).

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## LIGHTING AND WATCHING ACT (b).

### *Conviction under 3 & 4 Will. 4, c. 90, s. 55, for damaging Lamps.*

Did wilfully break a certain lamp then and there erected, put up and fixed by the inspectors duly appointed and acting under and by virtue of an act passed in the fourth year of the

(a) If whipping be adjudged, instead of imprisonment, say, "for his said offence to be once privately whipped out of prison, instead of being imprisoned, &c." See 24 & 25 Vict. c. 96, s. 119.  
 (b) See *R. v. JJ. Sussex*, 26 L. J., M. C. 74.

reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh Year of his late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other Provisions in lieu thereof," contrary to the form of the said statute.

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### LOAN SOCIETIES.

(3 & 4 *Vict. c. 110*, made perpetual by 26 & 27 *Vict. c. 56*.)

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### LOCOMOTIVES.

(USING ON TURNPIKE AND OTHER ROADS FOR AGRICULTURAL AND OTHER PURPOSES.)

(24 & 25 *Vict. c. 70* ; 28 & 29 *Vict. c. 83*, ss. 3, 4, 8.)

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### LODGING HOUSES.

(14 & 15 *Vict. c. 99*, ss. 13, 16.)

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### LORD'S DAY. (*See SUNDAY.*)

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### LOTTERY. (*Ante*, GAMING.)

(42 *Geo. 3*, c. 119, ss. 5, 6; 6 & 7 *Will. 4*, c. 66; 7 & 8 *Vict. c. 109* (a).)

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### LUNATICS.

(*See* 16 & 17 *Vict. c. 97*, s. 127; 18 & 19 *Vict. c. 105*; 23 & 24 *Vict. c. 75*; 27 & 28 *Vict. c. 29* (b).)

(a) Proceedings for the recovery of penalties relating to lotteries, contrary to 42 *Geo. 3*, c. 119, must, since the 46 *Geo. 3*, c. 48, s. 59, be sued for in the name of the attorney-general, and not before magistrates, whether the lotteries are private or

state lotteries; *R. v. Tuddenham*, 9 Dowl. 937; see *R. v. Crawshaw*, 30 L. J., M. C. 58.

(b) 11 & 12 *Vict. c. 43*, does not apply to complaints or orders made with respect to lunatics; *ante*, p. 60.

## MALICIOUS INJURIES.

1. *Conviction of a Person for cutting down Trees, with Intent to steal them, under the 24 & 25 Vict. c. 96, s. 33.*

For that the said A. B., on &c., at &c., did cut, break, root up and damage two lime trees, two sapling oaks and a large quantity, to wit, a cartload of under-wood, then and there growing, and being the property of C. D., with intent to steal the same, thereby doing injury to the said C. D. to the amount of (a); against the form of the statute in such case made and provided: And I, the said J. P., do therefore adjudge the said A. B. for his said offence to forfeit and pay the sum of 2*l.* [not exceeding 5*l.*], and the further sum of 10*s.* for the amount of the injury so done as aforesaid, and also the sum of 7*s.* for costs; and in default of immediate payment of the said sums to be imprisoned in the house of correction at , in the said county, and there kept to hard labour for the space of one calendar month (b), unless the said sums shall be sooner paid. And I direct that the said sum of 2*l.* shall be paid (c), and applied according to law; and that the said sum of 10*s.* shall be paid to the said C. D. And I order that the said sum of 7*s.* for costs shall be paid to the said C. D.

[By sect. 33, for a second offence, the punishment is imprisonment for not more than twelve calendar months, and a third offence is declared to be felony.

By sect. 32, a first offence of this kind is felony, where the tree, sapling, shrub, or underwood is growing in "any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house," and the amount of the injury exceeds 1*l.*

Possession of trees, &c., not satisfactorily accounted for, sect. 35. Stealing live or dead fence, gates, &c., sect. 34; fruit, vegetable produce, &c., sects. 36, 37. There is an appeal, sect. 110; but no *certiorari*, sect. 111.

By 24 & 25 Vict. c. 97, s. 52, any person who shall wilfully or maliciously commit any damage to any real or personal property, whether of a public or a private nature, for which no punishment is thereinbefore provided, shall, on conviction thereof before a justice, at his discretion, be imprisoned with or without hard labour for a term not exceeding two months, or forfeit and pay a sum not exceeding 5*l.*, and such further sum as shall appear to be a reasonable compensation for the damage not exceeding 5*l.*; which last-mentioned sum shall, in the case of private property, be paid to the party aggrieved [or the justice may discharge the offender on making satisfaction

(a) The injury must be to the amount of "a shilling at the least," that is, the immediate injury done to the tree, and not the consequential damage or cost of replanting; *R. v. Whiteman*, 23 L. J., M. C. 120.

(b) By sect. 107, the term of imprisonment is not exceeding two calendar months, where the amount of the sum forfeited or of the pe-

nalty imposed, or of both, together with the costs, shall not exceed 5*l.*; (and see 28 & 29 Vict. c. 127, *ante*, p. 543); not exceeding four calendar months where the amount shall not exceed 10*l.*; and not more than six calendar months in any other case.

(c) See sect. 106, for the application of the penalties.

to the party aggrieved, sect. 66]; and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in the same manner as any penalty imposed by a justice under that act, and if not paid, the offender may be committed to prison with or without hard labour for a term not exceeding two months. Provision is then made for persons having acted under a claim of right; and by sect. 53, the provisions of sect. 52 are extended to persons wilfully or maliciously committing any injury to trees, saplings, shrubs, or underwood, for which no punishment is thereinbefore provided. By sect. 58, malice against the owner of the property is not essential for this class of offences. There is an appeal under this act, sect. 68; but no *certiorari*, sect. 69.]

## 2. *Conviction for maliciously cutting and damaging Trees, under the 24 & 25 Vict. c. 97, s. 22(a).*

For that the said A. B., on &c., at &c., did unlawfully and maliciously cut, break, bark, root up and damage two sapling beech trees, six sapling horse-chestnut trees, six laburnum trees and six shrubs, the property of C. D., then and there growing, thereby then and there doing injury to the said C. D. to the amount of 15s., against the form of the statute in such case made and provided. And I, the said justice, do therefore adjudge, &c., [*the same as in the last precedent; the penalty and the form of conviction being precisely the same as for cutting trees with intent to steal them. The other provisions of the statute also, in regard to these two offences, are similar*].

## MANUFACTURES (b).

### *Conviction pursuant to 6 & 7 Vict. c. 40, s. 2, for embezzling Cotton Materials entrusted to Defendant to be worked up(c).*

For that the said T. P., on &c., at &c., being entrusted by R. B. and J. H., both of aforesaid, manufacturers of cotton goods, with four pieces of cotton warp, and nine pounds weight of cotton weft, of the goods and chattels of the said R. B. and J. H., and being then and there hired and employed by the said R. B. and J. H. to work up and manufacture the same into

(a) See sects. 23 and 24, as to destroying fruit and vegetable productions, &c.; sect. 25, damaging fences, stiles, &c.. See also *R. v. Dodson and others*, 9 A. & E. 704; *Charter v. Greame*, 13 Q. B. 216; 18 L. J., M. C. 73; *Horn v. Thornborough*, 3 Exch. 846; *Parrington v. Moore*, 2 Id. 223; *Kine v. Evershed*, 10 Q. B. 143.

(b) See *post*, "Mines," "Master and Servant," "Truck Act" and 17 Geo. 3, c. 56, s. 10, as to materials used in manufacture, which there is reason to suspect have been embezzled; *R. v. Edmundson*, 28 L. J., M. C. 213.

(c) *R. v. Wilcock*, 7 Q. B. 317; *Re Boothroyd*, 15 M. & W. 1; *Davis v. Nesh*, 6 C. & P. 167.

pieces commonly called calicoes, for them the said R. B. and J. H., and being entrusted as aforesaid with the said cotton warps and cotton weft for the purpose of working up and manufacturing the same as aforesaid, he the said T. P., unlawfully and against the form of the statute in that case made and provided, did then and there embezzle two pieces of the said cotton warp, and four pounds and a half weight of the said cotton weft, part of the said cotton materials with which he the said T. P. was so entrusted as aforesaid, contrary, &c.

[See form in sect. 28. The punishment by sect. 11 is imprisonment and hard labour for not less than fourteen days, nor more than three months (see *ante*, p. 543), for a first offence. By sect. 29 there is an appeal to the sessions, where the sum adjudged to be paid exceeds 20s., or the imprisonment exceeds one calendar month; but by sect. 30 no *certiorari*.]

## MARKETS AND FAIRS CLAUSES ACT.

(10 & 11 Vict. c. 14(a).)

### MASTER AND SERVANT.

(See APPRENTICE—COMBINATION—MANUFACTURES—TRUCK ACT.)

#### 1. *Conviction under 4 Geo. 4, c. 34, s. 3, of a Servant for not commencing Service under a Written Contract (b).*

That A. B., of &c., did, on &c., at the parish of \_\_\_\_\_, in the said [county (c)], contract with one C. D., to serve him in

(a) See *Elias v. Nightingale*, 27 L. J., M. C. 151; *Caswell v. Cook*, 31 Id. 185; *Wiltshire v. Willett*, 32 Id. 8; *Llandaff Market Company v. Lyndon*, 30 Id. 105; *Savage v. Brook*, 33 Id. 42; *Pope v. Whalley*, 34 L. J., M. C. 76; and *ante*, "Hawkers."

(b) The following review of the numerous cases under this statute may be found useful in practice (see also *ante*, p. 165, and abstract of the statute, *post*, 638):—A warrant of commitment, under the third section, adjudged that J. G., having contracted to serve J. S. as a collier for a cer-

tain time, and the term of his contract being unexpired, "did unlawfully misdemean and misconduct himself in his said service by neglecting and absenting himself from his said service without the leave of his master, without having given to his said master any notice thereof, and without assigning any sufficient reason for so doing;" Held bad, as it did not show that J. G. had absented himself without lawful excuse. Such an instrument need not set out the evidence, at all events since 11 & 12 Vict. c. 43, s. 17; *Re Geswood*, 2

(c) The justice must be for the county or place where the servant entered into the contract of service, or was employed, or was found: sect. 3, and *Johnson v. Reid*, 6 M. & W. 124.

the capacity and employment of a servant in husbandry (a) [or artificer, calico printer, handicraftsman, miner, collier, keelman,

El. & Bl. 952; 23 L. J. M. C. 35; 17 Jur. 1163. Lord Campbell said, "Such a document is no doubt, for some purposes, equivalent to a conviction; for instance, it is not necessary to draw up and return to the sessions any other formal record of the conviction." *Wightman, J.*, said, "Since the decision in *Lindsay v. Leigh*, it can hardly be contended that this is a conviction for all purposes." See also *Re Bailey and Collier*, 3 El. & Bl. 607, where the warrant alleged that the plaintiff had been guilty of divers misdemeanors, particularly that he had absented himself from the service of his masters before the term of his contract with them was completed: Held, that no conviction was necessary, and that the warrant, whether it was an order (as Mr. Baron Parke thought it was) or in the nature of a conviction, was the only instrument contemplated by the legislature, and the legality of the imprisonment depended upon the sufficiency of that instrument alone; and that, whether the warrant was construed with less strictness, as being in the nature of an order, or with greater strictness, as being in the nature of a conviction, it was bad, as it did not bring the case within the statute, by averring either that the contract was in writing or that the service had been entered upon; *Lindsay v. Leigh*, 11 Q. B. 455. Commitment stating that defendant did, before the contract of service was completed, "absent himself from his said service, and did thereby neglect to fulfil the same, contrary to the form of the statute," was held not to show any offence, as there might be some lawful excuse for his absence, though the statute simply makes the party absenting himself from service the ground of complaint; *Re Turner*, 9 Q. B. 80. See *Willett v. Booth*, 30

L. J., M. C. 6; *Youle v. Mappin*, *Id.* 234. There should not only be absence without lawful excuse, but knowledge on the part of the defendant that there was no lawful excuse; *Rider v. Wood*, 29 *Id.* 1; 2 El. & Bl. 338. Where the defendant had agreed in writing to enter into service, but could not do so (on account of a previous contract with another) without exposing himself to penalties, it was held that he had a lawful excuse for not commencing service; *Ashmore v. Horton*, 2 El. & Bl. 360; 29 L. J., M. C. 13. The rule formerly requiring that the evidence should appear to have been given in the presence of the party charged, applied also to these warrants of commitment, which operate in themselves as convictions or orders, and the warrant alone being returned, and being defective in this respect, the court would not assume that there was a distinct conviction free from the objection; *R. v. Tordoft*, 5 Q. B. 933; *Re Gray*, 2 D. & L. 539; *R. v. Lewis*, 1 *Id.* 822. In another case it was held to have the double character of a conviction and commitment, and to be bad in the character of a conviction, as it did not adjudge any imprisonment (*Re Geswood*, *ante*), but merely adjudged the complaint to be true, and then convicted the defendant, and commanded the keeper of the house of correction to receive him, to remain and be held to hard labour for a certain time; *Re Hammond*, 9 Q. B. 92. In another case it was held to be a commitment in execution, and bad for want of venue, in not showing that the contract had been entered into, or the work had been refused to be done, or the servant had been found, within the jurisdiction of the magistrate; *Johnson v. Reid*, 6 M. & W. 124. It is doubtful whether, since 11 & 12

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(a) It is necessary to show a contract to serve in an employment within the act; *R. v. Lewis*, 1 D. & L. 822; *Re Copestick*, 13 L. J., M. C. 161; *Wiles v. Cooper*, 3 A. & E. 524.



pitman, glassman, or potter], for the term of , from the  
day of (a), at and for the wages of \* (the said con-

Vict. c. 43, the conviction any longer forms part of the commitment; Smith on Master and Servant, p. 331, n. (e), 2nd edit. The relation of master and servant is essential to give the magistrate jurisdiction; *Hardy v. Ryle*, 9 B. & C. 603; *Willett v. Booth*, 30 L. J., M. C. 6; see also *Re Bailey and Collier*, 3 El. & El. 607; 18 Jur. 930; 23 L. J., M. C. 161, in which the Court of Queen's Bench held, that it might be shown by affidavit that there had not been any evidence before the magistrate of a contract to serve within the statute, so as to give them jurisdiction in the matter. The contract must be to serve the complainant exclusively; *Lancaster v. Greaves*, 9 B. & C. 628; *Ex parte Gordon*, 1 Jur., N. S. 683; 25 L. J., M. C. 12. It should be mutually binding; *R. v. Welch and another*, 2 El. & Bl. 357; 22 L. J., M. C. 145; *Re Lord*, 12 Q. B. 757; *Whittle v. Frankland*, 31 L. J., M. C. 81. As to aiding and abetting the servant to absent himself, see *Ex parte Smith*, 27 Id. 186; substituting good for bad commitment, *Id. ante*, p. 289, n. (e); showing by affidavit commitment was wrong, *ante*, p. 400. The following cases are not within the statute:—Domestic servants (*Kitchen v. Shaw*, 6 A. & E. 729); felonious acts (*Jones v. Williams*, 3 B. & C. 762; *Ex parte Jacklin*, 2 D. & L. 103; 13 L. J., M. C. 139); a person employed to keep possession under a *fi. fa* (*Branwell v. Pennick*, 7 B. & C. 536); contract to weave silk gowns at certain prices (*Hardy v. Ryle*, 9 B. & C. 603); to complete a carriage road for a certain price within a certain time (*Lancaster v. Greaves*, 9 B. & C. 628); to print pieces of woollen goods (*Ex parte Johnson*, 7 Dowl. 702); to keep accounts at a farm and to carry out the orders there given (*Davies v. Berwick*, 30 L. J., M. C. 84). The following cases are within the statute:—A designer who invents and draws patterns for calico printing

(*Ex parte Ormrod*, 1 D. & L. 825; 13 L. J., M. C. 73; *Lilly v. Elwin*, 11 Q. B. 742; *R. v. Lewis*, 1 D. & L. 822; 13 L. J., M. C. 46); a stuffer working manually for weekly wages and a commission and superintending other workmen (*Whiteley v. Armitage*, 13 W. R. 144); a person employed by a master tailor to make clothes as he should be required,—when engaged on a job, he was to work on the tailor's premises, and for him exclusively, until the job was finished (*Ex parte Gordon*, 25 L. J., M. C. 12); a skilled angle-iron smith engaged to work at the construction of an iron-clad vessel and to serve his employer exclusively until the completion of the vessel (*Lawrence v. Todd*, 32 L. J., M. C. 238); a butty collier, although he employ men under him (*Bowers v. Lovekin*, 6 E. & B. 584; 25 L. J., Q. B. 371; *Whiteby v. Armitage*, 5 N. R. 120; see, however, *Slceman v. Barrett*, 2 H. & C. 934; 33 L. J., Exch. 153, and *post*, "Truck"). When a fresh absenter renders the servant liable to a second conviction, see *Ex parte Baker*, 7 E. & B. 697; 26 L. J., M. C. 193 (in Exch. on a different point, 26 L. J., M. C. 155), and see *Youle v. Mappin*, 30 L. J., M. C. 234; *Whittle v. Frankland*, 31 Id. 84. Warrant stating that it appeared to the justices, as well upon examination on oath "as otherwise," that the defendant having contracted to serve, and the term of his contract being unexpired, did neglect and absent himself, &c., held sufficient; *Ex parte Baker*, *supra*. See, in case of an infant workman, *Re Lord*, 12 Q. B. 757; *Wood v. Fenwick and others*, 10 M. & W. 195; *R. v. Inhabitants of Chillesford*, 4 B. & C. 94; *Gray v. Cookson*, 16 East, 13, *ante*, p. 71. n. (o).

(a) It need not be for any specific time; *Taylor v. Carr*, 31 L. J., M. C. 111, and *Whittle v. Frankland*, *Id.* 81.

tract being in writing (*a*), and signed by the said A. B. and the said C. D.), and that the said A. B. did not at any time enter into or commence his said service according to his said contract, contrary, &c.

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2. *Conviction under same Section of a Servant for having entered upon Service and absented himself.*

To \* in preceding form] and that the said A. B., having entered upon such service, did afterwards, to wit, on, &c., at the said parish of , without notice and before the term of his said contract was completed, unlawfully, without the said C. D.'s consent, and without just excuse (*b*), absent himself from his said service, and hath from thence neglected to fulfil his said contract, contrary, &c.

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3. *Abatement of Wages under same Section for Misbehaviour (c).*

In adjudication state] I do therefore adjudge the said A. B. for his said offence to be punished by abating the sum of , being the whole [or a part] of the wages due to the said A. B. for his said service, according to the form of the statute in such case made and provided.

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4. *Discharge of Servant under same Section for Misbehaviour.*

In adjudication state] I do therefore adjudge the said A. B. to be discharged from his said service and employment, according to the form of the statute in such case made and provided.

[4 Geo. 4, c. 34, ss. 1 and 2, relate to complaints by and against appren-

(*a*) It is necessary to state this; *Lindsay v. Leigh*, 11 Q. B. 455; *Re Askew*, 20 L. J., M. C. 241; 15 Jur. 705.

(*b*) These words are necessary, *Re Turner*, 9 Q. B. 80; "without assigning sufficient reason" bad, *Re Geswood*, 2 El. & Bl. 952.

(*c*) Wages already due and unpaid may be abated; *R. v. Biggins*, 5 L. T., N. S. 505. As to order for payment of wages, see sects. 4 and 5; *Wiles v. Cooper*, 3 A. & E. 524; *Lowther v. Earl of Radnor*, 8 East, 113; *Gray v. Cookson*, 16 Id. 13;

*Branwell v. Penneck*, 7 B. & C. 539; *Ex parte Hughes*, 18 Jur. 447; 23 L. J., M. C. 138; *R. v. Bedwell*, 4 El. & Bl. 213; 1 Jur., N. S. 306; 24 L. J., M. C. 17; *Taylor v. Carr*, 2 H. & N. 219; 30 L. J., M. C. 201; *Ex parte Baker*, 26 L. J., M. C. 155; *Ex parte Smith*, 27 Id. 186. On complaint under 20 Geo. 2, c. 19, s. 1, by an artificer against his employer for wages, the justices may take into account the quality of the work done and deduct from the wages accordingly; *Sharp v. Hainsworth*, 32 L. J., M. C. 33.

tices. By sect. 3, if any servant in husbandry (*a*), or any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer or other person (*b*), shall contract with any person to serve him, and shall not enter into his service (such contract being in writing and signed) or having entered into it "shall absent himself from his service before the term of his contract (whether in writing or not) shall be completed, or neglect to fulfil the same," a justice of the county or place where the servant contracted or was employed, or was found, upon complaint on oath by the person with whom the contract was made, or his steward, manager or agent (*c*), shall issue his warrant for the apprehending such servant and examine into the complaint, and if the servant appear to have committed the offence, the justice may commit him to the house of correction with hard labour (*d*) for a period not exceeding three months, and abate a proportionable part of his wages during such period, or in lieu thereof may abate the whole of his wages or discharge him from his employment; sects. 4 and 5 relate to the recovery of wages by servants. There is no appeal (*e*).

By 26 & 27 Vict. c. 103, servants taking corn or other food belonging to their masters, contrary to their orders, for the purpose of feeding their horses or other animals, are not to be deemed guilty of felony, but on conviction before two justices of the peace may be imprisoned with or without hard labour, for any time not exceeding three ("two" now by 28 & 29 Vict. c. 127, *ante*, p. 543), months, or shall pay a penalty not exceeding 5*l*.

As to giving a false character to a servant, see 32 Geo. 3, c. 56.]

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## MEDICAL ACT.

(21 & 22 Vict. c. 20 (*f*).)

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## MERCHANT SHIPPING. (See SHIPPING.)

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(*a*) See *Ex parte Hughes*, 18 Jur. 447; 23 L. J., M. C. 138.

(*b*) "Other person" means a labourer *ejusdem generis*; *Branwell v. Penneck*, 7 B. & C. 536; *Kitchen v. Shaw*, 6 A. & E. 729. See as to "*ejusdem generis*," rule of construction, *Wheeler v. Gray*, *Id.* 268; *Taylor v. Oram*, 31 L. J., M. C. 252; *R. v. Nevill*, 8 Q. B. 452; *Bishop v. Elliott*, 11 Exch. 113; *Newton v. Ellis*, 24 L. J., Q. B. 337; *R. v. Edmundson*, 28 L. J., M. C. 213; *Peto v. Westham*, *Id.* 240; *Agar v. The Athenæum Society*, 27 L. J., C. P. 95; *Radnorshire Board v. Evans*, 32 L. J., M. C. 100; *Taylor v. Newman*, *Id.* 186;

*Wanstead Board of Health v. Hill*, *Id.* 135; *R. v. Silvester*, 33 *Id.* 79; *Harrison v. Blackburn*, 5 N. R. 90; 2 Welsby's Statutes, 189, n. (*a*). The act is extended to manufacturers of silk by 10 Geo. 4, c. 52.

(*c*) See *R. v. Hoseason*, 14 East, 605.

(*d*) See *Wood v. Fenwick*, 10 M. & W. 195, "to be corrected and held to hard labour" bad.

(*e*) See *R. v. JJ. of Staffordsh.*, 12 East, 572; *Re Gray*, 2 D. & L. 539; 14 L. J., M. C. 26; *R. v. Bedwell*, 4 El. & Bl. 213.

(*f*) *Ellis v. Kelly*, 30 L. J., M. C. 35; *Pedgreft v. Chevallier*, 29 *Id.* 225.

## METROPOLIS, LOCAL MANAGEMENT OF THE.

The following is an abstract of such sections in the act "For the better local Management of the Metropolis," 18 & 19 Vict. c. 120 (a), as come within the scope of this work:—

Penalty for forging or falsifying voting papers, or obstructing ward elections (sect. 21). On inspector for making incorrect return (sect. 23). On officers, &c., being interested in contracts, or exacting fees (sect. 64). Officers failing to render account, &c. may be committed by justices to prison (sect. 68). Penalty on house owners for not constructing drains into common sewer (sect. 73). For erecting a building beyond general line of buildings in a street without written consent of the Metropolitan Board of Works (sect. 75 (b)). For improperly making or altering drains (sect. 83). For erecting houses without proper water-closets, &c. (sect. 81). On owners of courts for not draining them and keeping pavement, &c., in repair (sect. 100). Order of justices to enter underground rooms and cellars (sect. 104). Penalty on persons taking up pavements for not reinstating them, and placing lights during the night time to prevent accidents (sect. 111). On water and gas companies for not repairing pavements injured by them (sect. 112). On house owners, &c., for not removing projections into streets (sect. 119). For not erecting hoards during repairs (sect. 121). Penalty for obstructing scavengers in performance of their duties (sect. 126). Owners and occupier to pay scavengers for removal of refuse of trades, and disputes as to what is refuse of trades, &c., to be determined by justices (sects. 128, 129). Penalty for withholding property transferred to Metropolitan Board of Works, or any vestry or district board (sect. 156). Rates under the act to be levied in same manner as poor-rate (sects. 161, 181) (c). Penalty for refusing inspection of assessment to persons assessed (sect. 177). For breach of bye-laws made by Metropolitan Board of Works:—power of justices to remit penalties (sect. 202). Penalty on persons sweeping dirt into sewers (sect. 205). Wilfully damaging lamps or other property of the board (sect. 206). Carelessly or accidentally damaging them (sect. 207). Interrupting workmen in execution of duties (sect. 208). Occupiers obstructing execution of works, or not disclosing owner's name (sect. 209). Method of proceeding before justices in question of damages, compensation, &c. (sect. 226). Penalties, &c. to be recovered as provided by 11 & 12 Vict. c. 43 (sect. 227). Damages to be made good in addition to penalty (sect. 228). Transient offenders (sect. 229). Proceedings not to be quashed

(a) Amended by 25 & 26 Vict. c. 102; see sects. 102, 107.

(b) *St. George's (Vestry) v. Sparrow*, 16 C. B., N. S. 209; 33 L. J.,

M. C. 118.

(c) *R. v. Ingham*, 32 L. J., M. C. 214.

for want of form, no certiorari (sect. 230). Appeal to quarter sessions on security given (sect. 231). On appeal, court may mitigate penalty, or order such further satisfaction as they may think reasonable (sect. 232). Penalties to be sued for within six months (sect. 233). Application of penalties (sect. 234).

## METROPOLITAN BUILDING ACT. (See BUILDING.)

### METROPOLITAN POLICE (a).

#### EXTENT OF METROPOLITAN POLICE DISTRICT.

The jurisdiction of the police courts within the metropolitan police district (which extends into the counties of Middlesex, Surrey, Hertford, Essex and Kent, and may be said to extend over a circle of ninety miles in circumference, having a diameter of thirty miles, Charing Cross being its centre (b)) is regulated by the stats. 10 Geo. 4, c. 44; 2 & 3 Vict. cc. 47, 71; 3 & 4 Vict. c. 84; and 19 Vict. c. 2, and certain orders in council. The police officers of the City of London are regulated by the stat. 2 & 3 Vict. c. xciv (local).

The following is an abstract of the most material provisions in the Metropolitan Police Acts and other statutes relating to them:—

#### NUMBER AND AUTHORITY OF JUSTICES.

Police offices may be established within the metropolis, and persons appointed as justices of the peace of the metropolitan district are to be justices of the counties included therein, and to execute the duties of justices of the peace at the said offices, and in all parts of the said district. They need not have qualification of estate (10 Geo. 4, c. 44, s. 1).

Any act directed to be done by any justice or justices belonging to any of the police courts established under the name of police offices in the metropolis, or by any justice or justices residing in or near or next the parish or place where any offence shall be committed or shall arise, may be done by one of the

(a) The stat. 11 & 12 Vict. c. 43, does not alter or affect the acts regulating the metropolitan police district or the police of the City of London. See sects. 33, 34, *ante*, p. 60. The Metropolitan Police Acts are not local and personal acts within the meaning of 5 & 6 Vict. c. 97, s. 5; *Barnett v. Cox*, 9 Q. B.

617; and see *Sharp v. Shepherd*, 24 L.J., Exch. 28, *S. C. in error*, 25 *Id.* 254; 1 H. & N. 115.

(b) Charnock's Police Guide, p. 5, n. (c); 2 & 3 Vict. c. 47, s. 2, and the orders in council, 3rd of January, 3rd of October and 10th of November, 1840.

said magistrates in any of the said courts (2 & 3 Vict. c. 71, s. 13). One magistrate may do alone any act at any of the said courts within the said district which "by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made," is directed to be done by more than one justice; but none of the said magistrates shall be competent to act as a justice, either alone or with other justices, in anything which is to be done at a special or petty sessions of all the justices acting in the division or at quarter sessions (sect. 14).

By 3 & 4 Vict. c. 84, s. 2, a police court division may be assigned to each of the police courts, and, by sect. 6, any two justices, having jurisdiction within the metropolitan police district, shall have, while sitting together publicly in the court or room used for holding special or petty sessions of the peace in any part of the said district within the limits of their commission, except in the divisions assigned to the police courts then established, and any two justices for the city of London, and the liberties thereof, shall, within the said city and the liberties, have all the powers and duties which any one magistrate of the said police courts has while sitting in one of the said courts by 2 & 3 Vict. cc. 47 and 71; provided that when a new police court has been established in the said district, and a division assigned thereto, such justices shall not act in that division in the execution of the said two acts, elsewhere than at such court; and that at every police court at which the regular attendance of a police magistrate has been ordered (under sect. 4), the police magistrate, while present in such court, shall act as the sole magistrate thereof.

By sect. 15, any two justices for the city of London and the liberties thereof, having jurisdiction therein, shall have all the powers and duties therein which any two justices, having jurisdiction within the metropolitan police court have within the said district by virtue of the said act, 3 & 4 Vict. c. 84.

Metropolitan  
police and sti-  
pendiary ma-  
gistrates may  
act alone.

By 11 & 12 Vict. c. 43, s. 33, any one of the magistrates appointed to act at any police court of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed for any other place, and sitting at a police court or other place appointed in that behalf, has full power to do alone whatever is authorized by the said act to be done by any one or more justice or justices of the peace (a), and the forms given by the act may be varied so far

(a) See *R. v. Hammersmith*, 11 Q. B. 391; *R. v. Painter*, 7 Q. B. 255. He may exercise at any police court the powers of two justices over any offence committed within the

county, even though not within the district assigned to the particular police court; *R. v. Richards*, 16 L. T. 386, Q. B.; and see *R. v. Bloomsbury*, 20 L. J., M. C. 200.

as it may be necessary to render them applicable to the said police courts, or the court or other place of sitting of such stipendiary magistrate; and nothing in the said act contained is to alter or affect in any manner any of the provisions of the Metropolitan Police Acts.

By sect. 34, the lord mayor of the city of London or any alderman of the said city for the time being, sitting at the Mansion-house or Guildhall justice rooms in the said city, may do alone any act at either of the said justice rooms "which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and nothing in this act contained shall affect in any manner any of the provisions" contained in 2 & 3 Vict. c. xciv. (a)

The lord mayor or any alderman of London may act alone.

#### POLICE FORCE.

To be appointed for whole district (10 Geo. 4, c. 44, s. 4). Their powers (sect. 7). Bailing offenders (sect. 9; 2 & 3 Vict. c. 47, s. 70; 3 & 4 Vict. c. 84, s. 8). Binding over persons making charges (2 & 3 Vict. c. 47, ss. 71, 72). Power to act on the river Thames (2 & 3 Vict. c. 47, ss. 5, 33, 34, 35). Seizing unlawful quantities of gunpowder (sect. 35). Summonses and writs in criminal proceedings to be served, &c., by (sects. 12, 13). Apprehending without warrant (sects. 54, 63, 67, 69). Penalty on, for neglect of duty, &c. (sects. 14, 17). Assaults on (sect. 18; 10 Geo. 4, c. 44, s. 8). Penalty on publicans harbouring police during hours of duty (sect. 6).

#### PROCEDURE.

Information, which need not be in writing, to be laid within six calendar months after commission of offence, or such shorter time as shall be limited by act specifying the offence. It may be heard by any of the said magistrates sitting at one of the said police courts (2 & 3 Vict. c. 71, s. 44). Upon information or complaint summons may issue, and on non-appearance (upon proof of service) the magistrate may proceed, in cases which are not of a criminal nature, *ex parte*, and in cases of a criminal nature, he is to issue warrant (sect. 19). Summons may be served by delivering copy to wife or servant, or adult inmate of family at

(a) See *Edwards v. Hodges*, 15 C. B. 477; 24 L. J., M. C. 51; 1 Jur., N. S. 91. Similar provisions to the above sections are contained in 11 & 12 Vict. c. 42, ss. 29, 30, as to indictable offences; and, by sect. 31 of the last-named act, the chief

magistrate of Bow Street Police Office is to be a justice of the peace for the county of Berks, if his name is inserted in the commission of the peace for that county, without possessing qualification by estate.

usual place of abode, and explaining purport (sect. 20). Summons or warrant requiring party to appear without the district for matter arising within it void, except as to rates and taxes (sect. 18 (a)). Warrant may be issued in first instance (sect. 21). Attendance of witnesses (sect. 22). Punishment of persons giving false evidence (sect. 23). Power to remand or enlarge prisoners on recognizances (sect. 36, and see 3 & 4 Vict. c. 84, s. 9). Penalty may be made payable immediately or within certain period, and in default may be levied with costs by distress, and if no sufficient distress, offender to be imprisoned for a term not exceeding one calendar month, where the sum does not exceed 5*l.*, and for a term not exceeding three calendar months in any case, the imprisonment to cease in each case upon payment of sum due (10 Geo. 4, c. 44, ss. 37, 38; 2 & 3 Vict. c. 71, s. 45; see 28 & 29 Vict. c. 127; *ante*, p. 543). Application of penalties (2 & 3 Vict. c. 71, s. 47 (b)). Power to award costs (sect. 31). Amends for frivolous information (sect. 32). Power to lessen share of informers (sect. 34). To mitigate penalties (sect. 35). Forms of information and conviction (sect. 48). Proceedings not to be quashed for want of form, no *certiorari* (sect. 49). Appeal (sect. 50). Protection of persons acting under the act (sects. 51—53). Warrants issued by any of the said magistrates in respect of any matters arising within the said district may be executed out of it by the constables to whom they are directed, without being endorsed (2 & 3 Vict. c. 71, s. 17 (c)).

#### OFFENCES, &c.

The following are declared to be misdemeanors, to which no special penalty is attached by the respective sections, and therefore they are subject to a penalty not exceeding 5*l.*, or imprisonment not exceeding one calendar month (sect. 73):—

Receiving ship stores from seamen, &c., of vessel in the Thames or docks therein (2 & 3 Vict. c. 47, s. 26).

Cutting ropes, cables, &c., of any such vessel with intent to steal, &c. (sect. 27).

Wilfully letting fall articles into Thames, &c., with fraudulent intent (sect. 28).

Framing false bill of parcels to escape detection, &c. (sect. 29).

Possessing instruments for unlawfully obtaining, &c., wine (sect. 30).

Piercing casks, opening packages, &c. (sect. 31).

Breaking packages with intent to spill contents (sect. 32).

(a) See 21 & 22 Vict. c. 71, ss. 276; 28 L. J., M. C. 45.  
6, 7.

(c) See *Barnett v. Cox*, 9 Q. B. 617.  
(b) *Wray v. Ellis*, 1 El. & El. 617.



The following are not declared to be misdemeanors, and, for the most part, have specific penalties attached to them :

Having on board of vessel in Thames between Westminster bridge and Blackwall guns loaded with ball, or firing guns in the night (sect. 36).

Heating combustible matter on board of such vessel (sect. 37).

Keeping fairs open within forbidden hours (sect. 38); and see further as to fairs (sects. 39, 40).

Freedom of Vintner's Company subject to certain provisions (sect. 41).

Public houses to be shut on the mornings of Sundays, &c. (sect. 42); see *post*, "Sunday."

Publicans not to supply liquors to persons under 16 years of age to be drunk on the premises (sect. 43).

Regulations of 9 Geo. 4, c. 61, respecting public houses to extend to other houses of public resort (sect. 44)(a).

Keepers of shops or house of public resort not to make internal communication with adjoining public house (sect. 45).

Unlicensed theatres (sect. 46)(b).

Places used for bear baiting, cock fighting, &c. (sect. 47).

Gaming houses (sects. 48, 49); see *ante*, "Gaming."

Pawnbrokers receiving pledges from persons apparently under the age of 16 (sect. 50).

Power to regulate the route and conduct of persons driving carriages, cattle, &c., during hours of Divine Service (sect. 51).

To prevent obstructions during public processions, &c. (sects. 52, 53).

Nuisances in thoroughfares or public places; *inter alia*, furious driving; ringing bells without excuse; unlawfully extinguishing lamps, &c.; power for constable to apprehend without warrant any person committing any such nuisance within view (sect. 54)(c).

Firing cannon, &c., near dwelling-houses (sect. 55).

Using dog carts (sect. 56), and see *ante*, "Animals."

Street musicians not departing when desired to do so (sect. 57)(d).

(a) *Wilson v. Stewart*, 3 B. & S. 913; 32 L. J., M. C. 198.

(b) *Fredericks v. Howitt*, 31 Id. 248; 1 H. & C. 381.

(c) *Justice v. Gosling*, 21 L. J., C. P. 94; *Summons v. Milligen*, 2 C. B. 524; *Sherborn v. Wells*, 32

L. J., M. C. 179.

(d) Repealed by 27 & 28 Vict. c. 55, which enacts that any householder within the Metropolitan Police district, personally, or by his servant, or by any police constable, may require any street musician or

- Person found drunk in the street, and guilty of riotous or indecent behaviour (sect. 58).
- Persons using carriages without drivers' consent (sect. 59).
- Prohibition of other nuisances in the streets (sect. 9).
- Throwing stones, &c., beating carpets, &c. (sect. 60).
- Mad dogs (sect. 61).
- Compensation for damage not exceeding 10*l.* (sect. 62).
- Constables may apprehend without warrant any offender who offends within his view, and whose name and residence are unknown to him and cannot be ascertained by him (sect. 63).
- Such power extended to certain other cases (sects. 64—67).
- Removing furniture to evade rent (sect. 67).
- Horses, carriages, boats, &c., of offenders may be detained (sect. 68).
- Penalty for offences of which no specific penalty appointed (sect. 73).
- Not to prevent indictment for indictable offence or liability under other acts to higher penalties, but no person to be punished twice for the same offence (sect. 74).
- Offences relating to goods stolen, unlawfully obtained, pawned, &c. (2 & 3 Vict. c. 71, ss. 24—30, 40) (a).
- Common informer, compounding informations (sect. 33).
- Disputes about wages for labour done on the Thames, &c. (except by Trinity ballastmen) to be settled by a magistrate if the sum does not exceed 5*l.* (sect. 37).
- Compensation for wilful damage by tenants (sect. 38).
- Oppressive distresses (sect. 39).
- Cleansing of houses in filthy and unwholesome condition (sect. 41).
- Exemption of proceedings under acts relating to customs, excise, stamps, taxes or post-office from 2 & 3 Vict. c. 71 (s. 56).
- Penalty for obtaining money by threatening information (3 & 4 Vict. c. 84, s. 11).
- Appeal to police magistrates from proceedings at the leet concerning weights and measures (sect. 12).
- Giving possession of deserted premises (sect. 13).

street singer to depart from the neighbourhood of the house on account of the illness, or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house, or for other reasonable or sufficient cause, and

on refusal the offender may be fined 40*s.*, or be imprisoned for any time not exceeding three days. He may be given into custody by the person making the charge against him.

(a) See *Buckley v. Gros*, 3 B. & S. 566; 32 L. J., Q. B. 129.

## CITY OF LONDON POLICE ACT.

(2 &amp; 3 Vict. c. xciv.)

Many of the provisions in this act are identical with those in the Metropolitan Police Acts.

"Justice" to mean the Lord Mayor or any aldermen or the recorder of the city (sect. 2).

Warrants of city justices may be executed in the counties of Middlesex, Surrey, Hertford, Essex and Kent, and of justices for those counties in the city, without indorsement (sects. 2, 3).

Public houses and houses of public resort (sects. 26—29).

Unlicensed theatres (sect. 30).

Gaming houses (sects. 32, 33).

Pawnbrokers (sect. 34).

Nuisances (sects. 35—41).

Mad dogs (sect. 42).

Compensation for damage not exceeding 10*l.* (sect. 43).

Arresting without warrant (sects. 44—46, 48).

Removing furniture to evade rent (sect. 47).

Power to take recognizances at station-houses (sect. 51).

Power to bind over persons making charges (sects. 52, 53).

Procedure (sect. 100).

Penalties (sects. 54, 97, 98).

Form of conviction (sect. 99).

Appeal (sect. 101).

Proceedings not to be quashed for formal defect, *certiorari* not taken away (sect. 103).

*Form of Information given in Schedule to 3 & 4 Vict. c. 84.*

Metropolitan } Be it remembered, that A. B.        in the  
Police District } of       , cometh on the        day of        (a),  
to wit.        } before us, J. P. and K. L., two of her  
majesty's justices of the peace for the        of       , sitting  
at the police court [or at the petty sessions court, *as the case  
may be*] at        within the metropolitan police district, and  
giveth us to understand and be informed that C. D. hath been  
guilty of [*here describe the offence*].

(a) If before one magistrate, say  
"before me, J. P., one of the magistrates of the police courts of the metropolis, sitting at the police court at       , within the Metropolitan Police District." An order of removal, purporting to be made by B. C., "one of the magistrates of the police courts of the metropolis, sitting at

the Clerkenwell Police Court within the Metropolitan Police District," was held sufficiently to show that the Clerkenwell Police Court was a court appointed under the provisions of 3 & 4 Vict. c. 84; *R. v. Hammer-smith*, 11 Q. B. 391; 17 L. J., M. C. 47.

## MILITARY LAW.

1. *Conviction of an Officer [or Soldier] for forcibly entering a House in search of Deserters, without a Justice's Warrant (a).*

Then being an officer [or soldier] in her majesty's regiment of \_\_\_\_\_, did then and there forcibly enter the dwelling house of one C. D. there situate, under pretence of searching for a deserter, he, the said A. B. not having then and there any warrant of a justice of the peace authorizing him so to do, contrary, &c.

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2. *For inciting a Soldier to Desert.*

Did on &c., at &c., within that part of her majesty's dominions called England, persuade C. D., then being a soldier in her majesty's \_\_\_\_\_ regiment of \_\_\_\_\_, to desert from the said regiment, contrary, &c.

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## MINES.

- Conviction under 5 & 6 Vict. c. 99, s. 1, of a Mine-owner, for employing a Female therein (b).*

Then being the owner of a certain mine there situate, called \_\_\_\_\_, did then and there employ a certain female person, to wit, one C. D., within the said mine, the said C. D. not having been employed within the said mine at or before the passing of a certain act of parliament made and passed in the sixth year of the reign of her present majesty, intituled "An Act to prohibit the Employment of Women and Girls in Mines and Collieries, to regulate the Employment of Boys, and to make other Provisions relating to Persons working therein," contrary, &c.

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## MITIGATION (c).

*Form of mitigating Penalty.*

*After the other formal parts of the Conviction, say,]* And we do award and adjudge that the said C. D. hath forfeited for his

(a) See 28 & 29 Vict. c. 11; and as to the apprehension of a deserter by an officer, see *Wolton v. Gavin*, 16 Q. B. 48.

(b) See 23 & 24 Vict. c. 151, and 25 & 26 Vict. c. 79, relating to the inspection of coal mines; and see

*Underhill v. Longridge*, 29 L. J., M. C. 65; *Knowles v. Dickenson*, 2 El. & El. 705; *Howell v. Wynne*, 15 C. B., N. S. 3; and *R. v. Handley*, 9 L. T., N. S. 827.

(c) See 27 & 28 Vict. c. 110, *ante*, p. 272.

said offence the sum of 50*l.*, according to the form of the statute in such case made and provided; and we, the said justices, seeing cause to mitigate and lessen the said penalty, do, at the request of the said defendant, according to the statute, mitigate and lessen the same to the sum of 25*l.*, to be paid and applied according to law, over and above the said sum of \_\_\_\_\_, which we also adjudge the said C. D. to pay to the said A. B., for his costs in this behalf.

### MUNICIPAL CORPORATION ACT (a).

By 5 & 6 Will. 4, c. 76 (the Municipal Corporation Act), ss. 98 and 111, in boroughs which have not received the grant of a separate court of quarter sessions, the county justices have concurrent jurisdiction with the borough justices, but no part of any borough, which has a separate court of quarter sessions is to be within the jurisdiction of the justices of any county from which such borough before the passing of the Municipal Corporation Act (9th September, 1855) was exempt (b).

Process, issued by a borough justice, may be served within county in which the borough is situated, or within seven miles of the borough (sect. 101).

Prosecution for offences to be within three calendar months of offence. Summons may issue upon charge, on oath, to appear before any two justices acting in and for the borough, and in default of appearance, they may either hear and determine the cause in absence of defendant, or issue a warrant for his apprehension (sect. 102).

Any borough justice may also issue his summons for the appearance of witnesses; and, in the event of any witness failing to appear, and not making reasonable excuse for his absence, or refusing to be examined, the justices present may fine him any sum not exceeding 5*l.* (sect. 128).

Any pecuniary penalty inflicted by the justices for any offence against the act may be levied by distress; and, for want of

(a) See *ante*, pp. 30—33; 2 Burn's Just. tit. "Corporation;" 2 Chitty's Statutes by Welsby and Beavan, tit. "Corporation;" 6 & 7 Will. 4, c. 105; 7 Will. 4 & 1 Vict. cc. 19, 78, ss. 30, 31; 12 & 13 Vict. cc. 18, 64; 13 & 14 Vict. c. 91; 15 & 16 Vict. c. 38, and 22 Vict. c. 35. Conviction under sect. 9, for inducing another to personate a burgess entitled to vote at a municipal election; *R. v. Hague*, 4 B. & S. 715; 33 L. J., M. C. 81.

(b) *R. v. Deane*, 2 Q. B. 96; *R. v. Salop*, *Id.* 72, 85; *R. v. Bridgewater*, 10 A. & E. 711; *R. v. Johnson*, *Id.* 740; *R. v. Ludlow*, 11 *Id.* 170; *R. v. Long*, 1 G. & D. 367; *R. v. Hull*, 8 A. & E. 638; *R. v. Bristol*, 4 E. & B. 265. An action lies at the suit of the treasurer of the borough fund for half of a penalty recovered by a *qui-tam* informer under 5 & 6 Will. 4, c. 76, s. 48; *The Mayor of Harwich v. Gaunt*, 5 El. & Bl. 182; 1 Jur., N. S. 708, S. C.

sufficient distress, the offender may be imprisoned, with or without hard labour, for any term not exceeding one calendar month, where the penalty does not exceed 5*l.*, and not exceeding two calendar months in any other case (sect. 129).

A form of conviction is provided by the act (sect. 130), and a power is given, to all persons who may think themselves aggrieved by any summary conviction in pursuance of the act, to appeal to the quarter sessions for the county or borough wherein the cause of complaint has arisen (sect. 131).

No conviction under the act is to be quashed for want of form, or removed by *certiorari*; and no warrant of commitment or distress is to be void for any defect or want of form (sect. 132) (*a*).

By 7 Will. 4 & 1 Vict. c. 78, s. 30, all matters cognizable by any justice, or by the quarter sessions having jurisdiction within any place, which, since the passing of the Municipal Corporation and Boundaries of Boroughs Acts, has ceased, or which may cease to be within and to be part of any borough or its liberties, shall be cognizable by the justices or quarter sessions of the county, &c., within which such place is situate, in the same manner as the same were within the jurisdiction of the justices for that borough (*b*).

By sect. 31, offences committed within any borough, against any local act of parliament, shall be cognizable by the borough justices, who shall possess the powers with respect to such offences which were formerly possessed by the justices of any county, &c., by virtue of such local act: and imprisonment for such offences may be awarded to take place in any gaol to which the borough justices have power to commit (*c*).

By 12 & 13 Vict. c. 18, s. 1, it is declared, that the sittings of the justices of the peace, or of a stipendiary magistrate in and for every city, borough or town corporate, having a separate commission of the peace, or for any part thereof, shall be deemed a petty sessions of the peace; and the district for which the same shall be holden shall be deemed a petty sessional division within the meaning of the acts relating to petty sessions.

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### 1. *General Form of Conviction given by Sect. 130 of 5 & 6 Will. 4, c. 76.*

to wit. } Be it remembered, that on the            day of            ,  
 of            , in the year of our Lord            , in the borough  
 of            , in the county of            , A. O. is convicted before us,

(*a*) See the Municipal Corporation Act, by Welsby (4th edit.), pp. 238, 239, n.

(*b*) See 13 & 14 Vict. c. 91, s. 9.

(*c*) *R. v. Sutcliffe*, 13 Q. B. 833.

J. P. and J. J. P., two of his [her] majesty's justices of the peace for the said county [or borough, or otherwise, as the case may be], for that the said A. O. did [here specify the offence, and the time and place when and where the same was committed, as the case may be]; and we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of \_\_\_\_\_, and shall pay the same immediately [or shall pay the same on or before the \_\_\_\_\_ day of \_\_\_\_\_], to \_\_\_\_\_, the treasurer for the said borough, to be by him applied according to the directions of the statute in that case made and provided. Given under our hands the day and year first above mentioned.

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2. *Information under Sect. 60 of 5 & 6 Will. 4, c. 76, against Public Crier of a Borough for not delivering up the Town Bell (a).*

Borough of E. in the } The information and complaint of T. F.,  
                                   } county of W.                esq., the mayor of the said borough, for  
 and on behalf of himself and the council of the said borough,  
 taken on oath before me, J. M. G. C., esq., one of her majesty's  
 justices of the peace for the said borough, this \_\_\_\_\_ day of  
                                   , 18 \_\_\_\_.

Who saith, that W. B., now residing in the parish of B., in the said borough, cordwainer, late the public crier for the said borough, and as such crier an officer of the said council, but who has lately been removed from such office of crier, has now in his possession a bell used by him in his said office, the property of the said council of the said borough; and that on the \_\_\_\_\_ day of \_\_\_\_\_ instant a notice in writing, directed to the said W. B., under the hands of this complainant, as mayor of the said borough, and of J. A., A. N. and T. W., three of the council of the said borough, directing the said W. B. to deliver to Mr. T. J., the town clerk of the said borough (who was thereby authorized to receive the same), the said bell lately used by him the said W. B. in his said office of crier, was personally served upon the said W. B., and that ever since the service of the said notice on the said W. B., he the said W. B. hath wilfully neglected to deliver the said bell to the said T. J. as required by the said notice; nor hath the said W. B. given any satisfaction to the said council, or to the said T. J. concerning the said bell, against the form of the statute in that case made and provided; and this informant therefore prays, that a warrant may be issued to apprehend and bring the said W. B.

(a) See *Baylis v. Strickland*, 1 M. & G. 591; and as to the other part of the same section relating to the delivery up of books, see *Re JJ. Gateshead*, 6 A. & E. 550, n.; *Mayor*

*of Lichfield v. Simpson*, 8 Q. B. 65, and *Eggington v. The Mayor of Lichfield*, 2 E. & B. 717; 24 L. J., Q. B. 360; 1 Jur., N. S. 908.

before two or more of her majesty's justices of the peace to answer unto this information and complaint, and to be further dealt with according to law.

Taken and sworn before

J. M. G. C.

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MUSIC, DANCING, &c. (See GAMING (a).)

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MUTINY ACT. (See MILITARY LAW.)

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NAVAL AND MILITARY STORES.

(39 & 40 Geo. 3, c. 89; 2 Will. 4, c. 40 (b).)

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NAVIGABLE RIVERS AND CANALS (c).

*Conviction under 3 & 4 Vict. c. 50, s. 7, for being found in a Boat on a Canal in Possession of Instruments for procuring Liquors, &c.*

Was found on board of a certain boat of one C. D., then and there being upon a certain canal there called \_\_\_\_\_, he the said A. B. having then and there in his possession, to wit, in his pocket, a certain instrument called a \_\_\_\_\_ for the purpose of then and there unlawfully obtaining certain spirits, to wit, \_\_\_\_\_, the property of one E. F., then and there being, contrary, &c.

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NUISANCES (d). (See HEALTH, PUBLIC.)

The stat. 18 & 19 Vict. c. 121, intituled "An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849," (amended by 23 & 24 Vict. c. 77;

(a) Keeping house for public dancing, music or other public entertainment of like kind without licence, see 25 Geo. 2, c. 36; *Hall v. Green*, 23 L. J., M. C. 15; *Marks v. Benjamin*, 5 M. & W. 565; *Gualtieri v. Matthews*, 34 L. J., M. C. 116; 11 Jur., N. S. 636.

(b) See *Ex parte Willmott*, 1 B. & S. 27; 30 L. J., M. C. 161; *R. v. Sleep*, 30 L. J., M. C. 170.

(c) Obstruction of, by throwing

rubbish into; *Mitchell v. Brown*, El. & El. 267; 28 L. J., M. C. 53.

(d) Steam vessel plying between London Bridge and the Nore Light and not consuming her own smoke; 19 & 20 Vict. c. 107; *Walker v. Evans*, 2 El. & El. 356; 29 L. J., M. C. 22. Locomotive engine not consuming its own smoke; 8 Vict. c. 20, s. 14; *Manchester Railway Company v. Wood*, *Id.* 29; 2 El. & El. 344. Locomotives on turnpike and other



and 26 & 27 Vict. c. 117), empowers justices of the peace to make orders for the abatement of nuisances (sects. 12 and 14) (a), and also prohibitive orders against public nuisances (sect. 13).

The latter may in all cases be appealed against (sect. 15), and the former when structural works are required (sect. 16). The costs and expenses of works are to be paid by the person on whom the order is made, or the owner or occupier (sect. 19) (b). With regard to complaints of nuisances arising from noxious trades and manufactures, the party complained against has the option, upon giving sufficient recognizances, to have the matter disposed of in a superior court of law or equity (sects. 27, 28).

The following are the clauses relating to the procedure under part 3 of the act:—

Notices, summonses and orders may be served by delivering the same at the residence of the persons to whom they are addressed, and where addressed to the owner or occupier of premises, they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of the inspector then by a registered letter through the post (sect. 31). Copies of orders of the local authority or their committee, purporting to be signed by the chairman of such body, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same (sect. 32). Where proceedings are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, the local authority may include such persons in one complaint, and the justices may include such persons in one summons and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs

roads; 28 & 29 Vict. c. 83, s. 12. Using steam engine within twenty-five yards of a turnpike road or highway; *Id.* sect. 6.

(a) Two justices (or the county court) have exclusive jurisdiction to enforce the repayment of money paid by parish authorities for the abatement of a nuisance and the costs thereof, under sect. 3 of this statute, even although the title to land may be in question; *Hertford Union v. Kimpton*, 11 Exch. 295; 25 L. J., M. C. 41. Upon whom order to remove nuisance is to be made; *Draper v. Sperring*, 10 C. B., N. S. 113; 30 L. J., M. C. 225. What

is an order to abate, as distinguished from an order for structural works; *Ex parte Mayor of Liverpool*, 5 El. & Bl. 537; 27 L. J., M. C. 89. The authority to abate is merely permissive, and a mandamus will not be granted to enforce it; *Re Ham*, 26 *Id.* 64. Obligation of Local Board of Health to enforce order of justices; *Re Ham Board of Health*, 26 L. J., M. C. 64.

(b) See *R. v. JJ. Sussex*, 30 L. J., M. C. 41; *Blything Union v. Warton*, 32 *Id.* 132; 3 B. & S. 352; *R. v. Warner*, 27 L. J., M. C. 144, and *R. v. Middleton*, 1 El. & El. 98.

may be distributed as to the justices may appear fair and reasonable (sect. 33). One or more joint owners or occupiers may be proceeded against alone (sect. 34). Whenever it is necessary to mention the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" (a) or "occupier" of such premises, without name or further description (sect. 35). Penalty for obstructing execution of the act, 5*l.* (sect. 36). Penalty on occupier obstructing owner in obeying provisions of the act (sect. 37). Penalties and expenses recoverable under 11 & 12 Vict. c. 43 (sect. 38). Proceedings not to be quashed for want of form; *certiorari* taken away (sect. 39). Appeals to quarter sessions, notice of appeal, recognizance, &c. (sect. 40) (b). Forms to be used as in schedule, or to like effect (sect. 41). Protection of local authority and its officers (sect. 42). Act not to impair jurisdiction of sewers commissioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to (sect. 43). Powers given by act not to affect navigation of rivers or canals, or working of mines (sect. 44). Saving as to rights of millowners, &c. (sect. 45). In citing the act in other acts of parliament, and in legal instruments and other proceedings, it is sufficient to use the words "The Nuisances Removal Act for England, 1855" (sect. 46).

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*Order of Justices for Removal of Nuisances by Owners,*  
§c. (c).

To the owner [or occupier] of [describe the premises] situate at [give such description as may be sufficient to identify the premises], or to A. B., of , or to [giving name of the local authority], or to their servants or agents, and to all whom it may concern.

County of [or] Whereas on the day of  
borough, &c. of , { complaint was made by , esquire,  
or district of , or { one of her majesty's justices of the  
as the case may be}. { peace acting in and for the county [or  
other jurisdiction] stated in the margin [or before the under-  
signed, one of the magistrates of the police courts of the metro-  
polis [or as the case may be], by [or by , on behalf of]  
[the local authority, naming it as the case may be], that in or  
upon certain premises situate at , in the district under the

(a) Meaning of word "owner"; *Blything Union v. Warton*, 3 B. & S. 352; 32 L. J., M. C. 132; *Draper v. Sperring*, 30 *Id.* 225; 10 C. B., N. S. 113.

(b) Sunday is counted in the two days for entering into recogni-

zances; *Ex parte Simkin*, 2 El. & El. 392; 29 L. J., M. C. 23. See *Mumford v. Hitchcock*, 32 L. J., C. P. 168.

(c) This form is given in the schedule to the act, 18 & 19 Vict. c. 121.

Nuisances Removal Act for England, 1855, of the complainants above named, the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or occupier*] of the said premises [*or was caused by A. B.*] [*if the nuisance have been removed say, the following nuisance existed on or about (the day the nuisance was ascertained to exist), and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises*].

And whereas , the owner [*or occupier*] within the meaning of the said Nuisances Removal Act, 1855, [*or the said A. B.*] hath this day appeared before us, justices, being two of her majesty's justices in and for , sitting in petty sessions at their usual place of meeting] [*or before me, the said magistrate of the police courts of the metropolis, or as the case may be*], to answer the matter of the said complaint [*or in case the party charged do not appear, say, and whereas it hath been this day proved to our (or my) satisfaction that a true copy of a summons requiring the owner (or occupier) of the said premises (or the said A. B.) to appear this day before us (or me)*], hath been duly served according to the said act]:

Now upon proof here had before us [*or me*] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or occupier*] of the said premises [*or by the said A. B.*], we [*or I*], in pursuance of the said act, do order the said owner [*or occupier, or A. B.*], within [*specify the time*] from the service of this order or a true copy thereof, according to the said act [*here specify the works to be done, as, for instance, to cleanse, whitewash, purify and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, &c.; or, for further instance, to cleanse or to cover or to fill up the said cesspool, &c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the justices that the nuisance is likely to recur on the premises, say*] and we [*or I*] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or occupier, or A. B.*] from [*here insert the matter of the prohibition as, for instance, from using the said house or building for human habitation until the same, in our judgment, is rendered fit for that purpose.*]

And if the above order for abatement be not complied with [*or if the above order of prohibition be infringed*], then we [*or I*] do authorize and require you the said [*local authority, naming it*] from time to time to enter upon the said premises, and to do all such works, matters and things as may be necessary for

[In case the nuisance were removed before complaint, say,] now upon proof here had before us that at or recently before the time of making the said complaint, to wit, on \_\_\_\_\_ as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [or I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [order of prohibition]; and if this order of prohibition be infringed, then we [or I] [order on local authority to do works].

Given under the hands and seals of us, two of her majesty's justices of the peace in and for [or the hand and seal of me, one of the magistrates of the police courts of the metropolis, or *as the case may be*], this            day of            , in the year of our Lord            .

OVERSEERS.

*Conviction under 5 & 6 Vict. c. 109, s. 9, of an Overseer for refusing to return the List of Persons qualified to serve as Constables.*

Then being one of the overseers of the poor of the said parish of \_\_\_\_\_ did then and there neglect to sign and return to the justices of the peace acting in and for the division of N., in the said county of \_\_\_\_\_ the list of persons liable and qualified to serve as constables for the said parish of \_\_\_\_\_ made out and agreed to by the inhabitants of the said parish in vestry duly held, contrary, &c.

PAWNBROKER (*a*).

1. *Information against a Pawnbroker, on 39 & 40 Geo. 3, c. 99, s. 22, for not exhibiting a Table of Interest.*

to wit. } Be it remembered, that on, &c., in at ,  
 } A. B., of , cometh before me , esq.,  
 one of her majesty's justices of the peace in and for the said city  
 of [or, in and for the county of ], and acting  
 near (b) the place where the offence hereinafter mentioned was  
 committed, and giveth me the said justice to understand and be

(a) See 9 & 10 Vict. c. 98, 19 & 20 Vict. c. 27, 22 & 23 Vict. c. 14, 23 Vict. c. 21, and *ante*, pp. 645, 647.

(b) See sect. 27.

informed, that C. D., of \_\_\_\_\_, on &c., and from thence until and at the time of exhibiting this information, did follow and carry on the trade and business of a pawnbroker at and in a certain shop, in and parcel of a certain dwelling-house, situate and being in \_\_\_\_\_, in the city of \_\_\_\_\_ aforesaid: nevertheless, the said C. D., not regarding the said act of parliament, did not, nor would, whilst he so followed and carried on the said business as aforesaid, cause to be painted or printed, in large legible characters, the rate of profit allowed by the said act to be taken by him the said \_\_\_\_\_, and also the various prices of the note or memorandum to be given by him, according to the rates in and by the said act allowed, and an account of what notes or memorandums were to be delivered gratis, and of the expense of obtaining a second note or memorandum, where the former one has been lost, mislaid, destroyed or fraudulently obtained, nor place the same in a conspicuous part of the said shop, wherein he so carried on the said trade or business as aforesaid, so as to be legible by the persons pledging goods and chattels standing in the places provided for such persons coming to pawn or redeem goods and chattels at the said shop; but, on the contrary thereof, he the said C. D., during the time aforesaid, wholly neglected and omitted so to do, contrary, &c.

[By sect. 27 the information must be laid within twelve calendar months after the offence.]

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2. *Information against a Pawnbroker, for not having his Name and Description over the Door; on the same Statute, Sect. 23.*

[*Comment as before*] did not, nor would, whilst he so followed and carried on the business as aforesaid, cause to be painted or written in large legible characters over the door of the said shop, by him during the time aforesaid made use of for carrying on the said trade or business of a pawnbroker, the christian and surname of him the said C. D., and the word "Pawnbroker" following the same, according to the form and effect of the statute in that case made and provided; but, on the contrary thereof, he, the said C. D., during the time aforesaid, to wit, on &c., and from thence for the space of one week and upwards then next following, made use of the said shop for carrying on the said trade and business of a pawnbroker, without having such christian and surname of him, the said C. D., and the word "Pawnbroker," so printed or written as aforesaid, contrary, &c.

3. *Information against a Pawnbroker, for taking Pledges of a Child under Twelve Years of Age; on the same Statute, Sect. 21.*

That, within twelve calendar months next before the exhibiting of this information (a), to wit, on &c., at &c., C. D., of &c. (he, the said C. D., then and there being a person using and exercising the trade and business of a pawnbroker), did unlawfully receive and take in pledge a certain cotton frock of and from one E. F., she, the said E. F., then and there being, and appearing to be, under the age of twelve years, contrary, &c.

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4. *Conviction, on 39 & 40 Geo. 3, c. 99, s. 6, of a Pawnbroker, for taking a Pledge without giving a Ticket, where the Goods were Pawned in an assumed Name.*

For that, on &c., at &c., the said M. C., being a person then and there using the trade and business of a pawnbroker, did then and there take of and from one J. G., in the name of J. N., by way of pledge, certain goods and chattels, to wit, [*&c. &c.*] upon which the said M. C. then and there lent and advanced the sum of            shillings; and although the said J. G., at the time he pawned the said goods and chattels, informed the said M. C. that his name was J. N., and that he lived in            Street, yet the said M. C. did not, at the time of taking the said pledge, give to the said J. G. a note or memorandum, fairly and legibly written or printed, or in part written and in part printed, containing therein a description of the said goods which he the said M. C. had so received in pawn, and also the place of abode of the person by whom such goods were pawned, according to the information given by the said J. G. to the said M. C. at the time of such pawning as aforesaid; contrary to the form of the statute in such case made and provided. And I, the said justice, do therefore adjudge the said M. C. to pay and forfeit for the same, the sum of £            [*not less than 40s. nor more than 10l. (b)*] And I do award, that out of the said sum of £            , so forfeited as aforesaid, the sum of £            , being one moiety of the said sum of £            , be paid to J. S., the party complaining in this behalf; and that the sum of £            , being the remaining moiety of the said sum of £            , so forfeited as aforesaid, be paid and applied as the law directs.

Given under my hand and seal at            , in the county aforesaid, the day and year first aforesaid.

[This form of conviction is somewhat fuller than the general form given

(a) See sect. 27.

(b) See sect. 26.

by sect. 34, for that awards no distribution whatever of the penalty—half of which, by sect. 26, goes to the complainant, and half to the overseers for the use of the poor. Sect. 35 gives an appeal; but, by sect. 34, the *certiorari* is taken away.]

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### 5. *Conviction under the same Statute, for taking more than legal Interest.*

T. T., of &c., pawnbroker, is convicted before me, one of her majesty's justices of the peace for the said county of \_\_\_\_\_; for that, on &c., at &c., he, the said T. T., who then and there used and exercised the trade and business of a pawnbroker, did lend and advance unto one H. G. the sum of 1s. 6d. upon the pledge of certain goods and chattels, to wit, three cotton window curtains, then and there pledged and pawned by the said H. G. with the said T. T. as such pawnbroker as aforesaid: and that the said T. T. afterwards, and within the space of twelve calendar months before the information exhibited by the said H. G. in this behalf, and within the space of seven days (a) after the expiration of the first calendar month after the said window curtains were so pledged as aforesaid, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at the parish and county aforesaid, did demand, receive and take of and from the said H. G., on his redeeming the said pledge, the sum of 1d. of lawful money of Great Britain, as for and by way of profit upon the said sum of 1s. 6d. so lent and received by the said T. T. upon the said pledge as aforesaid; the said sum of 1d., so demanded, received and taken, as aforesaid, being more than at and after the rate of one halfpenny for the loan of any sum not exceeding 2s. 6d. (b), by the calendar month, and being a greater profit than he the said T. T. was then and there entitled to, and ought to have demanded, received and taken in that behalf; contrary to the form of the statute in such case made and provided. And I, the said justice, do therefore adjudge the said T. T. to pay and forfeit, &c. [*as in the foregoing precedent to the end*].

Given under my hand and seal, the day and year first above written.

[The above is sufficient to exemplify the proper form of conviction under the statute, which will only vary according to the particular offence as stated in the information. The following forms of informations may, therefore, be of use in supplying the necessary statements, according to the respective facts.]

(a) See sect. 5.

(b) See sect. 2.

6. *Information against a Pawnbroker, under the same Statute, for not giving a Note legibly Written describing the thing pawned.*

That C. D., of \_\_\_\_\_, being then and there a pawnbroker, did take, by way of pawn or pledge, of and from E. F. of \_\_\_\_\_, a certain shirt, whereon the sum of 2s. was then and there advanced and lent by the said C. D. to the said E. F.: nevertheless, the said C. D., not regarding the statute in such case made and provided, did not nor would, at the time of taking the said pawn or pledge, give the said E. F. a note or memorandum, fairly and legibly written or printed, or in part written and in part printed, containing therein a description of the said shirt, which he, the said C. D., so received in pawn or pledge, and also the sum of money advanced thereon, with the day of the month and year on which, and the name and place of abode of the said E. F., by whom the said shirt was so pawned or pledged as aforesaid, and whether the said E. F. was a lodger or housekeeper, according to the form and effect of the said statute in that behalf; but, on the contrary thereof, although the said C. D., at the time of taking the said pawn or pledge as aforesaid, did give to the said E. F. a certain note or memorandum, as and for such note or memorandum as aforesaid, yet the said shirt, or the name and place of abode of the said E. F., and whether he was a lodger or housekeeper as aforesaid, were not fairly and legibly written or printed, or in part written and in part printed, in or upon the said note or memorandum, so given by the said C. D. to the said E. F. as aforesaid, contrary, &c.

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7. *Information, under Sect. 11, for receiving in pawn Goods in a state of Manufacture.*

That C. D., of \_\_\_\_\_, within the space of twelve calendar months now last past, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at the parish of \_\_\_\_\_, in the county aforesaid, he the said C. D. then and there using and exercising the trade and business of a pawnbroker, did unlawfully take in as a pledge and pawn from one G. F., of &c., divers materials plainly intended for the composing and manufacturing of cotton goods, that is to say, twenty pounds weight of cotton wool, and twenty reels of cotton yarn, after the same were respectively put into a state and course of manufacture, and before the same were completed and finished for the purposes of wear and consumption; which said materials, so taken in pledge as aforesaid, were entrusted to the said G. F. to manufacture and work up into cotton twist, and upon which said materials the said C. D. then and there lent unto the said G. F. the sum of ten shillings, contrary, &c.



8. *Information, under Sect. 24, for selling Pledges before the Time limited by the Statute (a).*

He the said C. G., being a person then and there using and exercising the trade and business of a pawnbroker, did receive and take from one W. B., in pawn and pledge for the sum of 2*l.*, a certain watch of him the said W. B. of the value of 5*l.*; and that he the said C. G., before the time limited in that behalf by the statute in that case made and provided, and within the space of twelve calendar months now last past, to wit, on the day of \_\_\_\_\_, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did sell the said watch, and cause the same to be sold, contrary, &c.

[This is one of the general offences against the act; the penalty for which is declared by sect. 26 to be not less than 40*s.* nor more than 10*l.*]

9. *Order, on 39 & 40 Geo. 3, c. 99, s. 13, to restore pawned Goods, supposed to have been feloniously Stolen (b).*

*Middlesex.*

To W. S., a constable and officer of the peace for the county of \_\_\_\_\_; and to W. P. and J. R., of \_\_\_\_\_, in the said county, pawnbrokers, and whom else these may concern.

Whereas on, &c., at &c., J. H., of &c., silversmith, in his proper person came before me, R. B., esq., one of her majesty's justices of the peace in and for the said county, and upon his corporal oath, on the Holy Gospel of God, duly administered to him by me, the said justice, did make oath and say, that R. M., J. M., and himself, the said J. H., carried on, in partnership together, the business of silversmiths; and that the following goods and chattels belonging to them, and of which they are the owners, that is to say, one silver milk-pot, &c. [*describing all the stolen goods*], had been unlawfully obtained and taken from them the said R. M., J. M., and J. H., to wit, on the same day and year aforesaid, at the said parish of \_\_\_\_\_, in the county aforesaid; and that he the said J. H. had just cause to suspect, and did suspect, that the said W. P. and J. R., of \_\_\_\_\_, in the said county, pawnbrokers, within the jurisdiction of me the said justice, that is to say, at

(a) See *Walter v. Smith*, 5 B. & Ald. 439; 1 D. & R. 1; *Ex parte Cording*, 4 B. & Ad. 198; *Shackell v. West*, 2 El. & El. 326; 29 L. J., M. C. 45.

(b) See *Peel v. Baxter*, 1 Stark. 472; *Packer v. Gillies*, 2 Camp. 336, n.; *Hartopp v. Hoare*, 1 Wils. 8; *Parker v. Patrick*, 5 T. R. 175.

the parish of \_\_\_\_\_, in the said county, had taken to pawn, and by way of pledge, the said goods and chattels of them the said R. M., J. M., and J. H., without the privity or authority of the said R. M., J. M., J. H., or any or either of them, they being the owners of the said goods and chattels. And whereas the said J. H. did on the same day and year aforesaid, at the public office aforesaid, in the said parish of \_\_\_\_\_, in the county aforesaid, make appear to the satisfaction of me the said justice probable grounds for such the suspicion of him the said J. H., one of the owners of the said goods and chattels; whereupon I the said justice did issue my warrant, directed to all constables and other her majesty's officers of the peace for the county of \_\_\_\_\_, for searching at the said parish of \_\_\_\_\_, in the county aforesaid, within the hours of business, the house and warehouse of the said W. P. and J. R., the persons so charged on oath as aforesaid, as suspected to have received and taken in pawn the said goods and chattels, without the privity of, or authority from the said owners thereof. And whereas the said W. S., a constable and officer of the peace for the county aforesaid, afterwards, to wit, on the same day and year aforesaid, at the parish last aforesaid, in the county aforesaid, in pursuance of and according to my said warrant, did search the house and warehouse of the said W. P. and J. R., wherein the said goods and chattels were, on oath as aforesaid, charged and suspected to be; and upon search of the said house and warehouse of the said suspected persons as aforesaid, the said goods and chattels which had been so pawned and pledged as aforesaid were found in the said house and warehouse. And whereas on this \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at the public office aforesaid, in the said parish of \_\_\_\_\_, in the county aforesaid, the said goods and chattels which had been so pawned and pledged, and found upon search as aforesaid, have been brought before me the said justice by the said W. S.; and the property therein of the said R. M., J. M., and J. H., the owners of the said goods and chattels, from whom the same had been unlawfully obtained and taken as aforesaid, is now made out to the satisfaction of me the said justice, by the oath of a credible witness, in the presence and hearing of the said W. P. and J. R.: Now I the said justice do order and direct the said goods and chattels so found upon the said search, and so pawned and pledged as aforesaid, to be forthwith restored to the said R. M., J. M., and J. H., the owners thereof; and I have caused the same to be restored accordingly.

Given under my hand and seal, at \_\_\_\_\_ in the said county, on, &c.

[In the above case the goods had been feloniously stolen from the applicants by one of their servants, and pawned; and the justices doubted

their jurisdiction to make the order; but counsel eminent in the law being consulted, the above order was made, and obeyed by the pawnbrokers without further question.]

10. *Conviction for receiving in Pawn part of a Watch, under the Watchmakers' Act, 27 Geo. 2, c. 7, s. 3 (a).*

J. H. was convicted before me, R. B., esq., one of her majesty's justices of the peace for the said county, of unlawfully receiving, on &c., at &c., by way of pawn, certain parts of a gold repeating watch, the property of J. D., of , that is to say, the movements and box of the said watch, of and from one J. R.; the said parts of the said watch having been lately before then, to wit, on &c., at &c., unlawfully purloined and embezzled by the said J. R. from the said J. D., then and there practising the trade of watch-making, by whom the said J. R. was then and there employed, and entrusted with the said parts of the said watch to repair the same, he the said J. H. then and there well knowing the said parts of the said watch to have been purloined and embezzled as aforesaid, contrary to the form of the statute in such case made and provided. And whereupon the said J. H. was adjudged by me, the said justice, to forfeit and pay, for his said offence, the sum of 20*l.*, to be paid and applied in manner following, that is to say, after satisfaction shall be made thereout to the said J. D., the party injured, which satisfaction I adjudge at the sum of £ , together with the sum of £ , for the costs of the prosecution judged reasonable by me, the said justice, the residue of the said sum of 20*l.*, to wit, the sum of £ , is to be paid and applied to and for the use of the poor of the said parish of , in the county aforesaid, being the parish wherein the said J. H. resided and inhabited at the time of committing the said offence, and also at the time of his conviction. Given, &c.

[A general form of conviction is given by the 4th section of the act, from which an appeal is given by sect. 3, but no *certiorari*.]

PILOT. (See SHIPS AND SHIPPING.)

PLAYERS (b).

(a) The defendant might have been convicted for this offence, also, under the 11th section of the Pawnbrokers' Act. See *ante*, p. 660.

(b) See 6 & 7 Vict. c. 68; *R. v. Glossop*, 4 B. & A. 616; *Levy v. Yates*, 8 A. & E. 129; *Fredericks v. Payne*, 1 H. & C. 584; 32 L. J.,

POISONED GRAIN OR SEED.

(ACT TO PROHIBIT SALE OR USE OF.)

(26 & 27 Vict. c. 113, s. 5; 27 & 28 Vict. c. 115.)



POLICE. (See METROPOLITAN POLICE AND TOWN POLICE.)  
(10 & 11 Vict. c. 89(a).)



POOR.

*Conviction under 4 & 5 Will. 4, c. 76, s. 95, of an Overseer for disobeying an Order of Guardians.*

Then being overseer of the poor of the said parish of \_\_\_\_\_, did wilfully disobey a certain legal and reasonable order of the guardians of the N. union, in the counties of C. and S., made in carrying the rules, orders and regulations of the Poor Law Commissioners for England and Wales into execution, that is to say, an order of the said guardians that [*here state the order*], contrary, &c.



POST-HORSE DUTY.

1. *Information against a Postmaster for not filling up a Ticket truly, on Letting a Pair of Horses for Hire, under 2 & 3 Will. 4, c. 120, ss. 61, 62, 63 (b).*

County of \_\_\_\_\_, } Be it remembered, that, on the \_\_\_\_\_ day of  
to wit. } \_\_\_\_\_, in the year of our Lord 18 \_\_\_\_\_, at the  
public office \_\_\_\_\_, in the city and liberty of \_\_\_\_\_, and  
county of \_\_\_\_\_, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_ [or,  
A. B., an officer of the Inland Revenue (c), or, a collector

M. C. 14; *Davis v. Douglas*, 4 H. & N. 480; 28 L. J., M. C. 193; *Re Jones*, 7 Exch. 586; 21 L. J., M. C. 116; *Leary v. Patrick*, 15 Q. B. 266; 19 L. J., M. C. 211; *Fredericks v. Howie*, 1 H. & C. 381; 31 L. J., M. C. 249; *Day v. Simpson*, 34 Id. 149.

(a) See *Cole v. Coulton*, 2 El. & El. 695; 29 L. J., M. C. 125.

(b) See 5 & 6 Vict. c. 79; *Burn's Just.*, vol. 5, tit. "Stage Coaches."

(c) By 6 & 7 Will. 4, c. 45, the collection and management of the duties on horses let for hire, and on licences relating to the same, are transferred from the Commissioners of Stamps and Taxes to the Commissioners of Excise (now the Commissioners of Inland Revenue); therefore the proceedings relating to such duties under this head are not subject to 11 & 12 Vict. c. 43.

or farmer of the duty on horses let to hire, *as the case may be*], cometh before me, W. D. G., esq., one of her majesty's justices of the peace for the county aforesaid, and informeth me, the said justice, that E. O., of \_\_\_\_\_, in the county aforesaid, postmaster, heretofore, and within the space of fourteen days (a) before the exhibiting of this information, to wit, on the first day of July, in the year aforesaid, at \_\_\_\_\_ in the county aforesaid, being then and there a postmaster licensed to let horses for hire, did let for hire unto one W. F. two horses (b), to go from \_\_\_\_\_, in the county aforesaid, to the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and back; and that he, the said E. O., did then and there falsely and fraudulently insert, and cause and permit to be inserted in the ticket, which was directed by the statute in that case made and provided to be delivered by the said E. O. to the person hiring such horses, or to the postilion or person to be employed to drive such horses, the name of another and different town and place than the town to and from which the said horses were hired to go, that is to say, the name of the town and place of \_\_\_\_\_, in the county of \_\_\_\_\_, as the town and place to and from which the said horses were hired by the said W. F. to go and return, contrary to the form of the statute in such case made and provided; whereby the said E. O. hath forfeited for his said offence the sum of 10*l*.

Taken and received by me, }  
the day and year first }  
above written.

[The above form of information is given by sect. 113 and see schedule (B) of the act. Sect. 103 directs the mode of proceeding, giving an appeal, but taking away the *certiorari*. By sect. 106, half the penalty goes to the queen, and half to the informer, if he sues and prosecutes for the same within fourteen days after the offence shall have been committed. Sect. 105 enables the justice to mitigate the penalty, so as it be not reduced to less than one-fourth, exclusive of costs.]

## 2. *Information by a Private Individual against a Toll-gate Keeper, for refusing to receive a Ticket directed to be delivered to him under the 2 & 3 Will. 4, c. 120, ss. 64, 65.*

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, to wit, } in the year of our Lord \_\_\_\_\_, at the police office at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county aforesaid, A. B., of, &c., who prosecutes as well for our sovereign lady the queen as for himself in this behalf, cometh before me, J. T., esq., one

(a) This allegation is material, if the informer claims any portion of the penalty. See *post*, 666, n. (a).

(b) By sect. 117, the term "horse"

or "horses" shall respectively be construed to mean and include any mare or gelding, or mares or geldings, as well as any horse or horses.

of her majesty's justices of the peace for the county aforesaid, and informeth me, the said justice, that L. M., of , in the said county of , yeoman, within fourteen days (a) before the exhibiting of this information, that is to say, on the day of , in the year aforesaid, at a certain toll-gate situate and being at aforesaid (he, the said L. M., then being a toll-gate keeper there), did wilfully refuse to receive of and from one C. D. (he, the said C. D., being then and there the person employed to drive two horses which had been let for hire by one G. F. to one R. S., and being then and there about to pass therewith through the said toll-gate), a certain ticket, purporting to be a note or certificate relating to the hiring of the said horses for a period of time not exceeding three days, that is to say, for two days, and being a ticket directed by the statute in such case made and provided to be delivered to and received by the said L. M., so being such toll-gate keeper as aforesaid, the said toll-gate being the first (b) toll-gate through which the said horses so let for hire as aforesaid passed and went after such letting for hire; and he, the said L. M., having notice of all and singular the premises aforesaid, and being duly required by the said C. D. to receive the said ticket, contrary to the form of the statute in such case made and provided; whereby the said L. M. hath forfeited for his said offence the sum of 10*l.*, one moiety thereof to the use of her majesty, and the other moiety thereof to the said A. B., who prosecutes as aforesaid; wherefore the said A. B. prays judgment of me, the said justice, and that the said L. M. may be summoned to make his defence to the charge aforesaid, and that I will proceed thereupon according to law.

Taken and received by me, }  
 the day and year first }  
 above written.

### POST-OFFICE.

Proceedings under statutes relating to the post-office are not subject to the provisions of 11 & 12 Vict. c. 43. By 7 Will. 4 & 1 Vict. c. 36, the laws relative to offences against the post-office of the United Kingdom, and for regulating the judicial administration of the post-office laws, are consolidated, the former laws having been repealed by a previous act passed in the same session of parliament, 7 Will. 4 & 1 Vict. c. 32 (c).

(a) This allegation is only material to entitle the informer to any portion of the penalty. See sect. 106.

(b) See sect. 64.

(c) See also 1 & 2 Vict. c. 97; 2

& 3 Vict. c. 52; 3 & 4 Vict. c. 96; 7 & 8 Vict. c. 49; 10 & 11 Vict. c. 85; 11 & 12 Vict. c. 88; 14 & 15 Vict. c. 56; 18 & 19 Vict. c. 27.

By sect. 13 of 7 Will. 4 & 1 Vict. c. 36, all pecuniary penalties not exceeding 20*l.* may be recovered, on summary proceeding, before any justice of the peace having jurisdiction where the offence is committed; and may be sued for (by sect. 12) by any person who shall inform for the same. The 13th section also regulates the mode of proceeding before justices, and gives an appeal, but no *certiorari*.

By sect. 14, the justice may, at his discretion, mitigate any penalty, provided all reasonable costs in prosecuting the offence are allowed over and above the sum to which the penalty is mitigated.

By sect. 15, all penalties sued for by any private person are to be divided between the queen and the informer; but those sued for by the attorney-general or other public officer are to belong wholly to her majesty.

By sect. 17, the justice is empowered to award costs against the informer, where the information is withdrawn or dismissed.

By sect. 18, the summons may be served by a copy being left at the usual or last-known place of residence of the defendant; or if he be a proprietor, driver, conductor or guard of any stage carriage, upon being left with the book-keeper, or person for the time being acting as book-keeper, for such stage carriage, in any town or place from, into or through which such carriage shall go or be driven nearest to the place where the offence shall be committed.

By sect. 19, a constable or other peace officer, refusing or neglecting to serve a summons or execute a warrant or order, is liable to a penalty of 10*l.*

By sect. 20, the same penalty is imposed on witnesses neglecting to attend or refusing to be examined.

By sect. 21, officers of the post-office are not disqualified from being witnesses, although entitled to or expecting a part of the penalty.

Sect. 22 directs in what manner any goods distrained under the act shall be sold.

By sect. 24, all penalties must be sued for within a year after the offence committed.

By sect. 45, every complaint, information, summons, conviction, warrant of distress, or commitment, may be drawn according to the several forms contained in the schedule, or to the same effect; and every such proceeding shall be good and effectual, without stating the case, or the facts, or evidence, in any more particular manner.

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## POUND BREACH.

*Conviction under 6 & 7 Vict. c. 30, s. 1, for releasing Cattle which had been Impounded for straying on Inclosed Land.*

Did release a horse from a certain pound, to wit, the common pound of the said parish of \_\_\_\_\_, and therein situate, the said horse having been before then lawfully seized for the purpose of being impounded, and having been impounded in the said pound, in consequence of his having been found wandering on certain inclosed land of C. D., there situate, without the consent of C. D. the owner thereof, contrary, &c.



## PROFANE SWEARING (a).

*Conviction on 19 Geo. 2, c. 21, for Profane Swearing.*

A. B., yeoman, not being a day labourer, common soldier, common sailor, or common seaman, and being under the degree of a gentleman, was convicted before me, one of her majesty's justices of the peace for the county aforesaid, [riding, division or liberty, aforesaid, or before the mayor, justice, bailiff or other chief magistrate, of the city or town of \_\_\_\_\_, within the county of \_\_\_\_\_, as the case may be], of swearing five profane curses, to wit, in the words "God damn you" (b), five several times repeated, and ten profane oaths, to wit, the words "by God," ten several times repeated, contrary to the form of the statute in such case made and provided; for which said offence I do hereby declare and adjudge that he, the said A. B., hath forfeited the sum of 30s., for the use of the poor of the parish of \_\_\_\_\_ (c) where the said offence was committed, that is to say, 2s. for each of the said curses, and 2s. for each of the said oaths, together with the sum of \_\_\_\_\_ for the costs and charges of this conviction.

[The above form is somewhat more full than the general form given by the 8th section of the statute. The conviction must be returned to the next general or quarter sessions. There is no appeal or *certiorari*.

By sect. 1, the penalty for every day labourer, common soldier, common sailor, and common seaman, is 1s.; every other person under the degree of a gentleman, 2s.; and every person of or above the degree of a gentleman, 5s., besides costs (sect. 10).

In default of payment of the penalty, or security given by the offender, he may be committed to the house of correction to hard labour for ten days (sect. 4); and for the same default as to the costs, he may be committed to hard labour for six days (sect. 10). But by sect. 5, if he be a soldier or

(a) *Ante*, pp. 258, 261.

L. J., M. C. 15; *ante*, p. 258.

(b) See *R. v. Sparling*, 1 Str. 479; and *R. v. Scott*, 4 B. & S. 368; 33

(c) Sect. 10.



seaman, instead of commitment, he is to be publicly set in the stocks for one hour for every single offence, or for two hours for any number of offences whereof he may be convicted at the same time.]

### PROMISSORY NOTES.

*Conviction under 48 Geo. 3, c. 88, s. 3, for Issuing Promissory Notes for a less Sum than Twenty Shillings.*

Did publish and utter a certain promissory note in writing for the payment of a sum of money, being less than the sum of twenty shillings, to wit, eighteen shillings, the said promissory note being then and there negotiable, contrary, &c.

### RAILWAYS.

1. *Conviction under 8 Vict. c. 20, s. 103, of a Passenger for travelling in a Carriage without having paid his fare (a).*

Did travel in a certain carriage of the "Railway Company," then being in and upon a certain railway there situate, called , belonging to the said railway company, he the said A. B. not having previously paid his fare, and with intent to avoid the payment thereof, contrary, &c.

2. *Conviction under Sect. 109 of a Person for Offending against Bye-laws of a Railway Company (b).*

Did unlawfully [state offence] contrary to the bye-law in that behalf duly made and published by the said railway company,

(a) See 26 & 27 Vict. c. 92; *The London and North-Western Railway Company v. Wetherell*, 20 L. J., Q. B. 337, and *West Riding Railway Company v. Wakefield Board of Health*, 33 L. J., M. C. 174, convictions of a railway company, under sect. 58 of 8 Vict. c. 20, for not repairing damage done by them to a road; and *Leech v. The North Staffordsh. Railway Company*, 29 L. J., M. C. 150, for not repairing roads over bridges; see also *The North Staffordsh. Railway Company v. Dale*, 27 Id. 147; for not having engines constructed to consume their own smoke, Man-

chester, &c. *Railway Company v. Wood*, 2 El. & El. 344; what are accommodation works under sects. 68 and 69, *R. v. Fisher*, 32 L. J., M. C. 12; a person cannot be convicted for sending dangerous goods by railway, unless he knew that the contents were dangerous at the time of sending them, *Hearn v. Garson*, 28 Id. 216.

(b) See ante, "Bye Law," and *Woodward v. Eastern Counties Railway Company*, 30 L. J., M. C. 196; *R. v. Frere*, 24 Id. 68; *Chilton v. London and Croydon Railway Company*, 16 M. & W. 212; *Calder*

pursuant to the provisions of an act of parliament made and passed in the                    year of the reign of her present majesty, intituled "An Act," &c., and which said bye-law was at the time of the commission of the said offence, and still is, in force, contrary, &c.

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### 3. *Conviction under 5 & 6 Vict. c. 55, s. 17, of a Railway Servant for doing an Act whereby Life was endangered.*

Then being an engine driver employed by the                    Railway Company in conducting traffic upon the                    railway belonging to the said railway company, did then and there negligently do a certain act, to wit [*describe the act done*], whereby the lives and limbs of persons then passing along and being upon the said railway there situate, belonging to the said company, were then and there endangered, contrary, &c.

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## RATES, TOLLS, AND TAXES (RETURNS OF). (23 & 24 Vict. c. 51.)

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## REFRESHMENT HOUSES.

(23 Vict. c. 27 (a); 23 & 24 Vict. c. 113; 24 & 25 Vict. c. 91;  
27 Vict. c. 18; 27 & 28 Vict. c. 64; 28 & 29 Vict. 77.)

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## RELIGIOUS WORSHIP.

(See 18 & 19 Vict. c. 81, and ante, *DISSENTERS*.)

and *Hebble Navigation Company v. Pilling and others*, 14 *Id.* 76; *Great Western Railway Company v. Goodman*, 21 L. J., C. P. 197. As to publication and evidence of bye-laws, see *Motteram v. Eastern Counties Railway Company*, 7 C. B., N. S. 558; 29 L. J., M. C. 57. Railway Companies rendering accounts to the Commissioners of Inland Revenue, 5 & 6 Vict. c. 79, 7 & 8 Vict. c. 85, and 26 & 27 Vict. c. 33.

(a) See *Taylor v. Humphries*, 34

L. J., M. C. 1; ante, p. 124, n. (q); *Fisher v. Howard*, 34 *Id.* 42. By sect. 42, penalties incurred under this act (except excise penalties) are to be recovered as under 11 & 12 Vict. c. 43. See *Taylor v. Oram*, 1 H. & C. 370; 31 L. J., M. C. 252, as to the meaning of the words "refreshment house;" and *Belasco v. Hannant*, *Id.* 225, as to "disorderly house," under sect. 32, and as to meaning of words "*bonâ fide*" travellers. See also, ante, p. 579, n. (a).

ROGUE. (*See VAGRANT.*)

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SALMON. (*See FISH.*)

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SALVAGE. (*See SHIPPING.*)

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SHEEP. (*See COMMON.*)

*Conviction under 11 & 12 Vict. c. 107, s. 1 (extended by 16 & 17 Vict. c. 62, and continued by 26 & 27 Vict. c. 95) for bringing Infected Sheep into a Market.*

Did bring certain sheep, to wit, twenty sheep, for the purpose of offering them for sale into a certain open market there situate, to wit, the market of A., the same being a market where other animals were then and there commonly exposed for sale, the said sheep then and there being infected with a certain contagious and infectious disorder known as the sheep pox or variola ovina, as he the said A. B. then and there well knew, contrary, &c.

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SHIPS AND SHIPPING.

1. *Conviction of a Master of a Ship, for refusing to deliver up the Certificate of the Ship's Registry, under the 17 & 18 Vict. c. 104, s. 50 (a).*

That A. B., late master of a certain ship, called the \_\_\_\_\_, during the time whilst he was such master, to wit, on &c., at &c., received and obtained the certificate of the registry of the said ship, and that afterwards, to wit, on &c., at &c., the said certificate then and there being in his possession, he, the said A. B., was then and there requested by C. D. and E. F., then and there being officers of her majesty's customs, and legally entitled to require the delivery of the said certificate, to deliver up the same to them, the said C. D. and E. F., but the said A. B. then and there wilfully detained the said certificate and refused to deliver up the same to the said C. D. and E. F., so being such officers as aforesaid, or to either of them.

(a) See *R. v. Walsh*, 1 A. & E. 828; 27 L. J., M. C. 110. 481; *Harkle v. Henzell*, 8 El. & Bl.

2. *Conviction of the Master of a British Steam-ship carrying Passengers between Great Britain and Ireland, for carrying more than the allowed Proportion of Passengers, under the 17 & 18 Vict. c. 104, s. 319.*

That A. B., of &c., mariner, on &c., at &c., (he the said A. B. being then and there the master of a certain British steam ship called the *Hibernia*, of the burthen of 150 tons, and duly licensed for the conveyance of passengers between Great Britain and Ireland, according to the directions of the statute in that behalf, and the said A. B. then and there having the charge and command of the said ship,) did have on board at one time after the said ship had cleared out from a certain port in Great Britain, that is to say, from Liverpool aforesaid, a greater number of passengers than having regard to the time, occasion and circumstances of the case was allowed or allowable by or according to the certificate before then prepared and issued by the Board of Trade, pursuant to the "Merchant Shipping Act, 1854," of which said certificate the said A. B. before then had due notice, contrary, &c.

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PILOTS.

3. *Conviction of an unlicensed Person, for continuing in the Charge of a Ship as a Pilot after a Licensed Pilot had offered to take Charge of her, under the 17 & 18 Vict. c. 104, s. 361.*

A. B., of &c., mariner, is convicted before me Sir J. C., Bart., Lord Mayor of the said city, and one of her majesty's justices of the peace for the said city; for that he the said A. B., on &c., at Gravesend, in the port of London aforesaid, he the said A. B. not being then and there a duly qualified or licensed pilot, did assume the charge and conduct of a certain ship called the *Aurora*, and did then and there continue in the charge and conduct of the said ship after one C. D., a pilot, then and there duly licensed and qualified to act in the premises, had offered to take charge of the said ship, as he the said A. B. at the time of his so continuing in the charge and conduct of the said ship then and there well knew (*a*), although the said ship was not then in distress, nor under circumstances making it necessary for the master of the said ship to avail himself of the best assistance which could be found at the time, and although the said A. B. did not continue in the charge or conduct of the said ship for the purpose of changing the moorings of the said ship or of taking her into or out of any dock, contrary, &c.

(*a*) It must be alleged that the unqualified pilot knew that a qualified pilot had offered to take charge

of the ship; *R. v. Chaney*, 6 Dowl. 281; *Chaney v. Payne*, 1 Q. B. 712.

4. *Conviction of the Master of a Ship for acting himself as a Pilot after a Licensed Pilot had made a Signal for that Purpose, under Sect. 353 (a).*

For that the said A. B., on &c., was the master and commander of a certain ship called the *Calypso*, and was then navigating the said ship near to the mouth (b) of the river Thames, that is to say, within sight of the port of Deal, in the county of Kent, and within a district in which the employment of a pilot was then by law compulsory, and the said ship was then subject to compulsory pilotage within the said district; and that whilst the said A. B. was so navigating the said ship, C. D., a pilot duly licensed and qualified to act as such, according to the form of the statute in such case made and provided, within the limits in which such ship then actually was, made a signal, according to the requisitions of the said statute, that he was willing and desirous of taking charge of the said ship; which signal could be and was plainly seen by the said A. B. on board the said ship; but the said A. B., disregarding the said signal, and his duty in that behalf, acted himself as a pilot in navigating the said ship from off Deal aforesaid to the port of London, he the said A. B. not then possessing a pilotage certificate enabling or entitling him so to do, contrary, &c.

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5. *Conviction under Sect. 355, of a Pilot for declining to go off to take Charge of a Vessel (c).*

For that the said A. B., of &c., mariner, on &c., at Deal aforesaid, he the said A. B. being then and there a pilot duly qualified and licensed according to the form of the statute in such case made and provided, and not then actually engaged in his capacity of pilot, did refuse and decline to go off to, or on board of, or to take charge of, a certain ship called "*The Victoria*," then and there wanting a pilot, and then and there being within the limits specified in the licence of the said A. B., and of which he was qualified to take charge, after the usual signal for a pilot had been displayed from and made by such ship; notwithstanding it was not then unsafe for the said A. B. to obey such signal, and he was not then and there prevented from so doing by illness or other reasonable or sufficient cause, contrary, &c. (d).

(a) See *Beilby v. Shepherd*, 3 Exch. 40; *Usher v. Lyon*, 2 Price, 118; *Hammond v. Blake*, 10 B. & C. 424; *Mackie v. Landon*, 6 Taunt. 256.

(b) See sect. 77 of 6 Geo. 4, c. 125, which, although repealed by 17 & 18 Vict. c. 120, was in force when the Merchant Shipping Act, 1854, came

into operation. See sect. 353 of the last-mentioned act. Pilot producing license, 17 & 18 Vict. c. 104; *Henry v. Trinity House of Newcastle*, 27 L. J., M. C. 57.

(c) See *The Frederick*, 1 W. Rob. 16.

(d) See convictions under sect.

The stat. 17 & 18 Vict. c. 104, consolidates the law relating to merchant shipping (*a*). The statute is divided into parts, and the following is an abstract of so much of the tenth part as relates to summary proceedings before justices (*b*):—

Every offence declared by the act to be a misdemeanor is punishable by fine or imprisonment, with or without hard labour. The court before which the offence is tried may order payment of costs and expenses. Every such offence is also to be deemed to be an offence made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding 100*l.*, and may be prosecuted accordingly in a summary manner before any two or more justices or one stipendiary magistrate as directed by 11 & 12 Vict. c. 43, and is to be treated under that act as an offence in respect of which two or more justices have power to convict summarily or to make a summary order. A right of appeal to the next general or quarter sessions of the county or city, &c., held not less than twelve days after the conviction, is given in every case of a summary conviction in England, where the sum adjudged to be paid exceeds 5*l.*, or the period of imprisonment adjudged exceeds one month. The appellant must give the complainant written notice of the appeal, and of its cause and matter, within three days after the conviction, and seven clear days at least before the sessions, and he is either to remain in custody or enter into a recognizance with two sufficient sureties to appear and try the appeal, abide the judgment, and pay any costs that may be awarded. Upon this notice being given, and the recognizance entered into, the justice before whom it is entered into is to liberate the appellant, if in custody. Power is given to the court to determine the case and deal with costs as it thinks proper, and if the conviction be affirmed, to issue process to enforce the punishment. All offences under this act in any British possession are punishable by any court in which, or by a justice by whom, offences of a like character are ordinarily punishable, or in such other manner or by such other courts or magistrates as may from time to time be determined by any act or ordinance duly made in the said possession (sect. 518). A stipendiary magistrate is to have full power to do

464, *The Andrew Wilson*, 32 L. J., Adm. 104; under sect. 257, *Leary v. Lloyd*, 29 L. J., M. C. 194; under sect. 376, *Stanton v. Banks*, 27 *Id.* 205; under sect. 50, *Arkell v. Henzell*, *Id.* 110.

(*a*) It is amended in a few particulars by 18 & 19 Vict. c. 91, and more fully by 25 & 26 Vict. c. 63. The stat. 17 & 18 Vict. c. 120,

repeals former enactments relating to the matters treated of in the Merchant Shipping Act. The acts relating to the carriage of passengers by sea, are 18 & 19 Vict. c. 119, and 26 & 27 Vict. c. 71.

(*b*) This abstract is condensed from Dowdeswell's edition of the Merchant Shipping Acts.

alone whatever two justices of the peace are by the act authorized to do; and, for the purpose of giving jurisdiction, every offence is to be deemed to have been committed, and every cause of complaint to have arisen, either in the place where it actually was committed or arose, or where the person complained against may be (sects. 519, 520).

A court, or justices having jurisdiction under this or any other act, or at common law, for any purpose whatever, over any district on the coast of any sea, or abutting on or projecting into any bay, channel, river or navigable water is to have jurisdiction over any ship or boat being on or passing off such coast, or lying in or near such bay, &c., and over all persons on board or belonging to her, as if they were within the limits of their original jurisdiction (sect. 521).

Service of any summons or other matter in any legal proceeding under this act is to be sufficient if made personally on the person, or at his last place of abode, or by leaving the summons for him on board any ship to which he may belong with the person being, or appearing to be, in command or charge of the ship (sect. 522).

If the master or owner of a ship, who is directed by any order to pay any seaman's wages, penalties or other sums, fail to pay them, the court or justices who made the order, in addition to any other powers of compelling payment, may direct the amount remaining unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture and apparel (sect. 523).

A court or magistrate imposing any penalty for which no specific application is provided, has power to direct the whole or part of it to be applied in compensating any person for the wrong or damage he may have sustained by the act in respect of which the penalty is imposed, or in paying the expenses of the proceedings. Subject to this power, all penalties recovered in the United Kingdom are to be paid into the exchequer as the treasury directs, and those recovered in any British possession are to be paid over into its public treasury (sect. 524).

The time for instituting summary proceedings under this act is thus limited:—No conviction for any offence can be made in any such proceeding, if instituted in the United Kingdom, unless it is commenced within six months after the commission of the offence; or if both or either of the parties happen during that time to be out of the United Kingdom, within two months after they both first happen to arrive or be at one time within it; or if it be instituted in any British possession, unless it is commenced within six months after the commission of the offence; or if both or either of the parties happen during that time not to be within the jurisdiction of any court capable of dealing with the case, within two months after they both first happen to arrive or to be at one time within such jurisdiction.

No order for payment of money is to be made in any such proceeding, if instituted in the United Kingdom, unless it be commenced within six months after the cause of complaint arises; or if both or either of the parties happen during such time to be out of the United Kingdom, within six months after they both first happen to arrive or to be at one time within it; or if it be instituted in any British possession, unless it is commenced within six months after the cause of complaint arises; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, within six months after they both first happen to arrive, or be at one time within the jurisdiction.

No provision contained in any other act or ordinance, for limiting the time within which summary proceedings may be instituted, is to affect summary proceedings under this act (sect. 525).

Any document required by the act to be executed in the presence of, or to be attested by a witness or witnesses, may be proved by the evidence of any person able to bear witness to the requisite facts, without calling any attesting witness (sect. 526, and see Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, s. 26).

By the Amendment Act, 1862 (25 & 26 Vict. c. 63, s. 49), justices have jurisdiction over claims of salvage, wherever the service was performed, provided the property salvaged does not exceed 1,000*l.* (a).

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### SLAUGHTER HOUSES (b).

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### SMUGGLING. (See CUSTOMS.)

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### STAGE COACHES. (See HACKNEY COACH (c).)

By the 2 & 3 Will. 4, c. 120, the former acts relating to stage coaches are repealed, and the law on this subject is consolidated and amended.

(a) See *Atkinson v. Woodall*, 1 H. & C. 170; 31 L. J., M. C. 174, and *post*, "Wreck," p. 690; and as to effect of special agreement between the parties on the jurisdiction of justices under this act, see *The William and John*, 32 L. J., Adm. 102. What is a passenger ship, under 18 & 19

Vict. c. 119; *Ellis v. Pearce*, El., Bl. & El. 431; 27 L. J., M. C. 257.

(b) *Elias v. Nightingale*, 8 El. & Bl. 698; 27 L. J., M. C. 151.

(c) See also 26 & 27 Vict. c. 33; 11 & 12 Vict. c. 118; 5 & 6 Vict. c. 79; 4 & 5 Will. 4, c. 51, and 3 & 4 Will. 4, c. 48.



By sect. 103, all penalties not exceeding 20*l.* may be recovered on summary conviction before a justice of the peace; and the mode of proceeding is regulated. An appeal is given to the sessions, but no *certiorari*. Mode of proceeding.

Sect. 104 declares by whom the various penalties imposed by the act shall be sued for and recovered; which, by sect. 106, are to go half to the queen and half to the informer, if sued for within fourteen days after the offence committed; but if afterwards, then the whole to her majesty. From this and other provisions this appears to be an act relating to the excise, and, therefore, proceedings under it are exempt from stat. 11 & 12 Vict. c. 43 (see *ante*, p. 610, n. (a)). Application of penalties.

Sect. 105 enables a justice to mitigate any penalty, so as it be not reduced to less than one-fourth of the whole penalty incurred, exclusive of the costs and charges of the prosecution. Mitigation.

Sect. 108 empowers the justice to award costs to the defendant, where the information or complaint is withdrawn or dismissed. Costs.

By sect. 109, the summons may be served personally on the defendant, or at his usual or last place of residence; or in the case of a proprietor, driver, conductor or guard of any stage carriage, a copy may be left with the book-keeper, or person for the time being acting as book-keeper, for such stage carriage in any town or place from, into or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed. And any notice required by the act to be given to any proprietor, or to any other person, may either be served personally or be left at his usual or last place of residence; or (in the case of a proprietor) be left with any book-keeper, or person acting as book-keeper, at any office belonging to such proprietor. Service of summons; and notice.

Sect. 110 imposes a penalty of 10*l.* on constables for refusing to serve summonses, &c.; and, by sect. 111, the same penalty is imposed on witnesses for neglecting to attend or refusing to give evidence. Penalty on constables and witnesses.

Sect. 113 declares that every complaint, information, summons, conviction, warrant of distress or commitment may be drawn out according to the several forms contained in the schedule; and that every such proceeding shall be good and effectual without stating the case, or the facts or evidence in any more particular manner. Form of proceedings.

Sect. 115 directs in what manner goods distrained under the act shall be sold.

1. *Conviction of the Driver of a Stage Coach, for carrying more than the proper Number of outside Passengers, under Sect. 15 of 5 & 6 Vict. c. 79.*

C. D., of &c., coachman, is convicted before me, J. P. B., esq., one of her majesty's justices of the peace for the county aforesaid, in pursuance of an act passed in the sixth year of the reign of her majesty Queen Victoria, intituled "An Act to repeal the Duties payable on Stage Carriages, and on Passengers conveyed upon Railways, and certain other Stamp Duties, in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to the Stamp Duties:—" For that the said C. D. heretofore, and within the space of fourteen days before the exhibiting of the information (a) in this behalf, to wit, on &c., at &c., he, the said C. D., being then and there the driver (b) of a certain stage carriage with four wheels travelling on the queen's highway, and employed for the purpose of conveying passengers for hire to and from London and Acton, in the said county, and then and there drawn by four horses, and which said carriage was then and there constructed to carry twelve outside passengers and no more, exclusive of the driver and the conductor or guard, according to the regulations of the said statute, did unlawfully carry and convey, and suffer and permit to be carried and conveyed, on and about the outside of the said carriage, more outside passengers than the said carriage was constructed to carry, or the number allowed for that purpose by the said statute in that behalf, that is to say, thirteen outside passengers, exclusive of the driver and the conductor or guard; none of the said passengers then and there being a child or children in the lap, nor under seven years of age (c), contrary to the form of the statute in that case made and provided; for which offence I do adjudge that the said C. D. hath forfeited the sum of 5*l.* [*if the justice mitigate the penalty*, and which sum of 5*l.* I do hereby mitigate to the sum of 2*l.*], to be distributed according to the directions of the said statute in that behalf, over and above the sum of 10*s.* for the costs and charges of E. F., the informer, in prosecuting this conviction.

Given under my hand and seal the day and year, and at the place first above written.

(a) This allegation is material, to entitle the informer to any portion of the penalty; otherwise it is immaterial; the only consequence of not lodging an information before a justice until after the fourteen days being, that the *whole* penalty goes to the crown. See sect. 106 of 2 & 3 Will. 4, c. 120.

(b) A man may be convicted as driver, although not the driver employed by the owners; *R. v. Barker*, 3 East, 504.

(c) See sect. 13 of 5 & 6 Vict. c. 79. This allegation, however, is unnecessary, it being matter of excuse contained in a separate section of the act.

2. *Conviction of the Driver, under Section 43 of 2 & 3 Will. 4, c. 120, for carrying on the Roof Luggage above the proper Height, where the Driver did not attend before the Magistrate.*

C. D., of &c., coachman, heretofore, and within the space of fourteen days (a) before the exhibiting of the information in this behalf, to wit, on the            day of            inst., at Bolton, in the county aforesaid, he, the said C. D., then and there being the driver (b) of a certain stage coach with four wheels, drawn by four horses, and travelling on the queen's highway and then and there employed for the purpose of conveying passengers for hire to and from Manchester and Preston, in the said county, did then and there carry and convey, and suffer and permit to be carried and conveyed, on the top and roof of the said stage coach a quantity of luggage (c), exceeding ten feet and nine inches in height from the ground, measuring to the highest point of such luggage so being upon the top and roof of the said stage coach; contrary to the form of the statute passed in the third year of the reign of King William the Fourth, intituled "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage Coaches, and on Horses let for Hire in Great Britain; and to grant other Duties in lieu thereof; and also to consolidate and amend the Laws relating thereto." And the said C. D., although duly summoned to answer the said charge, having neglected to appear before me pursuant to the said summons, or to make any defence against the said charge, I, the said justice, proceeded to examine into the truth of the said charge; and the same having been fully proved before me upon the oath of G. H., a credible witness, it manifestly appears to me that the said C. D. is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me, the said justice, that he, the said C. D., be convicted; and I do hereby convict him of the offence aforesaid in pursuance of the said statute. And I do hereby declare and adjudge that he, the said C. D. hath forfeited for his said offence the sum of 5*l.* of lawful money of Great Britain, to be distributed according to the directions of the said statute, over and above the said sum of £        for the costs and charges of A. B., the informer, in prosecuting this conviction.

Given under my hand and seal, at Manchester aforesaid, this  
day of            , in the year of our Lord 18        .

[There is not perhaps any actual necessity for deviating from the general form of conviction given by the statute, notwithstanding the defendant's neglect to appear before the magistrate; for the 103rd section expressly declares, that the justice may convict either on the appearance of the

(a) See note (a), *ante*, p. 678.

(b) See note (b), *ante*, p. 678.

(c) See sect. 116 for the meaning of the term "*luggage*."

party accused, or in default thereof; and the form of conviction in the schedule makes no distinction whether the defendant appears or not before the magistrate.]

3. *Information against the Driver, under the 45th Section, for refusing to stop at a Toll-Gate to have the Luggage measured, &c.*

That heretofore and within fourteen days (a) now last past, to wit, on the       day of       , in the year aforesaid, at Ospringe, in the said county, one A. B., being then and there a passenger travelling in a certain coach with four wheels on the queen's highway, then and there employed as a public stage carriage for the purpose of conveying passengers for hire to and from London and Canterbury, in the county aforesaid, did require and demand of C. D., of &c., he the said C. D. then and there being the driver (b) of the said coach, to stop the same at the toll-gate at Ospringe aforesaid, in order that the toll-gate keeper of such gate might count the number of passengers upon the box, and in, upon and about the said coach, and might measure and ascertain the height of the luggage thereupon: and that the said C. D. then and there refused and neglected to stop the said coach at the said toll-gate for the purpose aforesaid, contrary to the form of the statute in such case made and provided; whereby the said C. D. hath forfeited for his said offence the sum of 5*l*.

Taken and received by me, }  
the day and year first }  
above written.

4. *Conviction of a Toll-Gate Keeper, under the same Section, for refusing to measure the Luggage, &c.*

One R. C., who was then and there an inside passenger, travelling in a certain coach with four wheels, and drawn by four horses on the queen's highway, known by the name of the Regulator, and then and there employed as a public stage carriage for the purpose of conveying passengers for hire to and from London and Exeter, did require the driver of the said coach to stop the same at the toll-gate at Hammersmith aforesaid, for the purpose of having the number of passengers counted and the height of the luggage measured; and that the driver of the said coach having stopped the same for that purpose, he the said R. C., being such passenger as aforesaid, did then and there require

(a) Note (a), *ante*, p. 678.

(b) See note (b), *ante*, p. 678.

and demand of H. S., then being the toll-gate keeper at the said toll-gate, to count the number of passengers upon the box, and in, upon or about such coach, and to measure and ascertain the height of the luggage thereupon, and to sign a memorandum in writing of the number of such passengers in the inside, and on or about the outside, of such coach (distinguishing the number on the box) and of the height of such luggage, and to deliver such memorandum to the said R. C.; but the said H. S., on being so requested as aforesaid, did unlawfully and wilfully refuse to count the number of such passengers, or to measure and ascertain the height of such luggage, or to sign a memorandum in writing of the number of such passengers, or of the height of such luggage in manner aforesaid, or to deliver such memorandum so signed to the said R. C., contrary, &c.

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5. *Information against the Driver, under the 47th Section, for quitting his Box before a proper Person stood at the Horses' Heads.*

J. W., of Preston, in the county aforesaid, coachman, heretofore and within fourteen days (a) last past, to wit, on the day of            instant, at Chorley, in the county aforesaid, he the said J. W. being then and there the driver of a stage carriage drawn by four horses, and then and there travelling on the queen's highway, did stop the said carriage at Chorley aforesaid, and did then and there quit the box of the said carriage, without delivering the reins into the hands of some fit and proper person, and before any fit and proper person was placed or stood at the heads of the horses, or any of them, belonging to the said carriage, and had the command of the said horses, contrary [*&c. as in form No. 1, ante, p. 678*].

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6. *Conviction of the Driver, or Guard, under the 47th Section, for using abusive Language to a Passenger.*

That the said C. D. heretofore and within the space of fourteen days (a) before the exhibiting of the information in this behalf, to wit, on the            day of            instant, at the parish of Chorley, in the county aforesaid, he the said C. D. being then and there the driver [*or conductor, or guard,*] of a certain stage carriage with four wheels, called "The Telegraph," then and there travelling on the queen's highway, and employed for the purpose of conveying passengers for hire to and from Man-

(a) See note (a), *ante*, p. 678.

chester and Preston in the county aforesaid, did unlawfully use abusive and insulting language to A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, esquire, who was then and there travelling as an inside passenger by the said carriage, contrary [*&c. as in form No. 2, ante, p. 679, to the end, the penalty being the same*].

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*7. Conviction of the Driver, under the 48th Section, for  
furious Driving.*

That the said C. D. heretofore and within the space of fourteen days (a) before the exhibiting of the information in this behalf, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, at the parish of Garstang in the county aforesaid, he the said C. D. being then and there the driver of a certain stage-coach with four wheels, called "The North Star," drawn by four horses, and travelling on the queen's highway, and then and there employed as a stage-carriage for the purpose of conveying passengers for hire to and from Manchester and Carlisle, did unlawfully and wilfully by wanton and furious driving endanger the safety of A. B., who was then and there an inside passenger by the said coach, and divers, to wit, fourteen other persons, who were also then and there passengers in and upon such coach, contrary to the form of the statute [*&c. as in form No. 2, the penalty being the same*].

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*8. Conviction of the Guard, under the 47th Section, for  
neglecting to take Care of a Passenger's Luggage.*

That the said C. D. heretofore and within the space of fourteen days (a) before the exhibiting of the information in this behalf, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, at Hounslow, in the county aforesaid, he the said C. D. being then and there the guard of a certain stage-coach with four wheels, called "The Red Rover," then and there travelling on the queen's highway, and employed for the purpose of conveying passengers for hire to and from London and Manchester, did unlawfully neglect to take due care of certain luggage, to wit, a portmanteau containing divers articles of wearing apparel belonging to A. B., of \_\_\_\_\_, in the said county of Middlesex, gent., who was then and there an inside passenger travelling by the said stage-coach, and which said portmanteau was then and there being carried by such stage-coach; by reason of which neglect of the said C. D., the said portmanteau and its contents became wholly lost, contrary, &c.

(a) See note (a), *ante*, p. 678.

## SUNDAY.

1. *Conviction under 29 Car. 2, c. 7, s. 1, for Trading on a Sunday (a).*

The same being the Lord's-day, commonly called Sunday, and the said A. B. being then and there a \_\_\_\_\_, and being then above the age of fourteen years, did then and there do and exercise certain worldly labour, business and work in his ordinary calling of \_\_\_\_\_ aforesaid upon the said Lord's-day, by then and there selling to one C. D. a \_\_\_\_\_, the same not being a work of necessity or charity, contrary, &c.

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2. *For opening Public-house or Selling Beer between Three and Five o'Clock on Sunday Afternoon, under 18 & 19 Vict. c. 118.*

And the said day, being Sunday, did open his house for the sale of beer between the hours of three and five of the clock in the afternoon, to wit, at four of the clock in the afternoon, otherwise than to a traveller or to a lodger in the said house or premises, contrary, &c. (b).

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## TAXES. (See EXCISE.)

(a) See *R. v. Barton*, 13 Q. B. 389; *Barton v. Bricknell*, *Id.* 393. A farmer is not within the statute; *R. v. Silvester*, 33 L. J., M. C. 79.

(b) *Ante*, p. 579, n. (a). 18 & 19 Vict. c. 118, repeals 17 & 18 Vict. c. 79, and enacts (by sect. 2) that licensed victuallers, or persons licensed to sell beer by retail, &c., shall not open or keep open their houses for the sale of beer, &c., between the hours of three and five o'clock in the afternoon, nor after

eleven o'clock in the afternoon, on Sunday, Christmas-day, Good Friday or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, &c., except to a traveller or lodger therein; sect. 3 prohibits the opening of houses of public resort for the sale of liquors during certain hours on Sundays, &c.; sect. 4 empowers constables to enter such houses at any time; sect. 5 imposes a penalty for

## TELEGRAPHS.

(26 & 27 *Vict. c. 112 (a).*)

## THAMES CONSERVANCY.

(20 & 21 *Vict. c. cxlvii (b)*; 27 & 28 *Vict. c. 113.*)THEATRE. (*See PLAYERS.*)

## TOWNS IMPROVEMENT.

(10 & 11 *Vict. c. 34 (c).*)

## TRADE-MARKS.

(25 & 26 *Vict. c. 88, ss. 15, 16 (d).*)TREES. (*See MALICIOUS INJURIES.*)TRUCK ACT (1 & 2 *Will. 4, c. 37 (e).*)

*Conviction under Sects. 3 and 9, for making an Illegal Payment under.*

Then being the employer of one C. D., an artificer employed in the manufacture of \_\_\_\_\_, did then and there, by the agency

every offence against the act. Each separate sale is to be deemed a separate offence. One justice may convict (*Id.*) This statute does not repeal 11 & 12 *Vict. c. 49*, which regulates the time of opening beer-houses on the forenoon of Sunday; *R. v. Senior*, 33 L. J., M. C. 125.

(a) *R. v. United Kingdom Telegraph Company*, 31 L. J., M. C. 167.

(b) *Turmidge v. Shaw*, 30 *Id.* 113.

(c) *Mayor of Blackburn v. Parkinson*, 1 El. & El. 71; 28 L. J., M. C. 7; *R. v. Great Western Railway Company*, El., Bl. & El. 600; 28 L. J., M. C. 246.

(d) See the edition of this act, with notes, by H. B. Poland, 1862.

(e) General forms are given in the schedule. As to what cases are within, see sect. 19, and *Riley v. Warden*, 2 Exch. 59; *Chawner v. Cummings*, 8 Q. B. 311; *Sharman v. Sanders*, 13 C. B. 166; *Floyd v. Weaver*, 16 Jur. 289; 21 L. J., Q. B. 151; *Olding v. Smith*, 16 Jur. 497; *Fisher v. Jones*, 32 L. J., M. C. 177; *Sleeman v. Barrett*, 2 H. & C. 934; 33 *Id.* Exch. 153, and cases there cited. See also "Master and Servant," *ante*, p. 637, n. (b).



of one E. F., his servant, unlawfully pay to the said C. D. certain wages then due and payable in respect of such employment by the said A. B. to the said C. D., to wit,                    shillings, otherwise than in the current coin of the realm, to wit, in loaves of bread, the said loaves not being victuals dressed or prepared under the roof of the said A. B., and there consumed by the said C. D., contrary, &c.

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## TURNPIKE ROADS. (See HIGHWAYS.)

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### VACCINATION (a).

*Conviction, under 3 & 4 Vict. c. 29, s. 8, for producing Small-pox by Inoculation.*

Did produce the disease of small-pox in one C. D. by then and there inoculating the said C. D. with certain variolous matter, to wit,                    , contrary, &c.

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### VAGRANT ACT (b).

By the 5 Geo. 4, c. 83, all former provisions relative to idle and disorderly persons, rogues and vagabonds, incorrigible rogues or other vagrants, are repealed.

Sect. 3 designates the persons who shall be deemed "*idle and disorderly persons*," and who, on conviction by one justice on the oath of one witness, may be committed to hard labour for not more than one calendar month.

Sect. 4, describes the persons who shall be deemed "*rogues and vagabonds*," and who may be committed in like manner for not more than three calendar months (c).

(a) See also 4 & 5 Vict. c. 32. Both acts are extended by 16 & 17 Vict. c. 100, and 24 & 25 Vict. c. 59. A parent who has been fined once for neglecting to have his child vaccinated, cannot be proceeded against a second time for the neglect, although his child remain unvaccinated; *Pilcher v. Stafford*, 33 L. J., M. C. 113.

(b) See 2 Chitty's Statutes by Welsby and Beavan, tit. "Criminal Law," p. 177; 1 & 2 Vict. c. 38, 20 & 21 Vict. c. 83, and *Nixon v.*

*Nanney*, 1 Q. B. 747; *R. v. Flintan*, 1 B. & Ad. 227; *Mann v. Davers*, 3 B. & Ald. 103; *Baldwin v. Blackmore*, 1 Burr. 596; *R. v. Hall*, 3 Burr. 1636; *R. v. Maude*, 6 Jur. 646; 2 Dowl., N. S. 58; *R. v. York*, 5 Burr. 2684; *R. v. Rhodes*, 4 T. R. 220; *R. v. Hooper*, 6 Id. 225. As to vagrant children, see "Juvenile Offenders," *ante*, p. 629.

(c) See conviction under sect. 4, of suspected person for frequenting "a highway" or "place adjacent," with intent to commit felony; *Ex*

Sect. 5 declares who are to be deemed "*incorrigible rogues*," who may be committed in like manner till the next quarter sessions; when (by sect. 10) the justices there, after having examined into the circumstances of the case, may order the offender to be further imprisoned and kept to hard labour for not more than a year, and be whipped during his imprisonment.

By sect. 17, a general form of conviction is given, which

*parte Brown*, 21 L. J., M. C. 113; *Ex parte Jones*, *Id.* 116; 7 Exch. 586; *R. v. Howarth*, 1 Moo. C. C. 207; *Re Cross*, 1 H. & N. 651; 26 L. J., M. C. 28. Being at night in a dwelling-house for an unlawful purpose, under s. 4; *Kirkin v. Jenkins*, 32 L. J., M. C. 140. A private house in which a sale by public auction is held, is for the time a place of "public resort," within the meaning of the 4th section; *Sewell v. Taylor*, 7 C. B., N. S. 160; 29 L. J., M. C. 50; and on same point, see *Re Jones*, 21 *Id.* 116; *Re Brown*, *Id.* 113; *Davys v. Douglas*, 4 H. & N. 180; 28 L. J., M. C. 193; *Ex parte Davis*, 2 H. & N. 149; 26 L. J., M. C., 178. A conviction under the same section, for playing "with an instrument of gaming, to wit, three cards, at a pretended game of chance, called "odd man," in a certain open and public place, to wit, in a third class carriage, used on the London, Brighton and South Coast Railway," was held to be invalid, for not showing that the carriage was then used or travelling along the railway for the conveyance of passengers; *Ex parte Freestone*, 1 H. & N. 193; 25 L. J., M. C., 121, *ante*, "Gaming." An omnibus is a public place within the meaning of the section; *R. v. Holmes*, *Dearsley*, C. C. 207; 22 L. J., M. C. 122; (and see, where a man indecently exposed himself at the back of a house on the roof, *R. v. Thallman*, 33 L. J., M. C. 58;) so is the platform of a railway station, *Ex parte Davis*, 26 L. J., M. C. 178, and see *R. v. Badcock*, 6 Q. B. 787; 14 L. J., M. C. 88; *Mersey Docks v. Jones*, 9 C. B., N. S. 812; 30 L. J., M. C. 185, 239; *R. v. Berenger*, 3 M. & S. 73, and *Hildreth v. Adamson*, 8 C. B., N. S. 58; 30 L. J., M. C. 204. Halfpence are not "instruments of gam-

ing" within the act; *Watson v. Martin*, 34 L. J., M. C. 50. Desertion of wife and leaving her chargeable to the parish, under sect. 4; *Sweeney v. Spooner*, 3 B. & S. 329; 32 L. J., M. C. 82; *Flannagan v. Bishopwearmouth (Overseers)*, 8 El. & Bl. 451; 27 L. J., M. C. 46. And as to desertion of wife within the meaning of the Divorce Act, see *Williams v. Williams*, 33 L. J., Div. 172. Running away and leaving children chargeable; *Cambridge Union v. Parr*, 10 C. B., N. S. 99; 30 L. J., M. C. 241. There must be an actual, not merely an impending, chargeability; *Heath v. Heape*, 1 H. & N. 478; 26 L. J., M. C. 49. The wife is not a competent witness against the husband on a charge against him for refusing to maintain his wife and family, under the 3rd section; *Reeve v. Wood*, 34 L. J., M. C. 15. Endeavouring to procure charitable contributions contrary to sect. 4; *R. v. Cavanagh*, 1 Dowl., N. S. 546. Among the offences enumerated in sect. 3 is the not maintaining (having means) those members of a man's family, whom he is bound to maintain; and sect. 6, enables any person to apprehend a person "found offending against the act." It was held, that a constable ought not to apprehend without a warrant a man who does not support his wife, as he could not be said to be "found offending"; *Harley v. Rogers*, 2 El. & El. 674; 29 L. J., M. C. 140. The stat. 11 & 12 Vict. c. 110, s. 10, enacts that persons applying for relief at any workhouse, &c., having at the time in their possession and under their immediate control money or other property, of which on inquiry they shall not make correct and complete disclosure, are to be deemed idle and disorderly persons.

is directed to be transmitted to the sessions; and a copy of it is declared admissible in evidence (a). An appeal is given by sect. 14 (b).

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1. *Conviction, under the above Act, of a Party for begging in the Highway.*

A. B. is convicted before me C. D., one of her majesty's justices of the peace in and for the said county, of being an idle and disorderly person, [or a rogue and vagabond, or an incorrigible rogue, as the case may be,] within the intent and meaning of the statute made in the fifth year of the reign of his majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds in that part of Great Britain called England;" that is to say, for that the said A. B., on the first day of July, in the year aforesaid, at Sloane Street, in the parish of Saint Luke, Chelsea, in the said county, was wandering abroad, and then and there placed himself in Sloane Street, aforesaid, the same being a public place and street, to beg and gather alms, [or was a petty chapman and pedlar, wandering abroad and trading, without being duly licensed or otherwise authorized by law.] And for which said offence the said A. B. is hereby ordered to be committed to the house of correction at Cold Bath Fields, in the said county, there to be kept to hard labour for the space of one calendar month. Given under my hand and seal the day and year, and at the place first above written.

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2. *Conviction at the Quarter Sessions of a Party, for a Second Offence of exposing to View an obscene Picture, after a previous Commitment as an incorrigible Rogue by a Magistrate, under the 5 Geo. 4, c. 83, ss. 5, 10 (c).*

*Somersetshire.* Be it remembered, that at the general quarter sessions of the peace, holden at &c., before J. B. B., J. S., esquires, and others their companions, justices of our lady the queen, assigned to keep the peace of our said lady the queen, in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said county, G. W., late of, &c., labourer, having been committed to the custody of the gaoler or keeper of the gaol or

(a) Proof of conviction; *Giles v. Siney*, 13 W. R. 92; ante, p. 502.

(b) Notice of appeal under this section, stating, as a ground of ap-

peal, that the appellant was not guilty, is sufficient; *R. v. JJ. Newcastle-upon-Tyne*, 1 B. & Ad. 933.

(c) See 20 & 21 Vict. c. 83.

house of correction at Shepton Mallett, in the same county, by virtue of a certain warrant, under the hand and seal of T. H., esq., one of her majesty's justices of the peace for the county aforesaid, and bearing date the seventh day of April, in the year of our Lord 18   ; which said warrant was issued by the said justice by virtue of a certain conviction made before the granting of the said warrant, bearing date the day and year last aforesaid, whereby the said G. W. was convicted before the said T. H., the justice aforesaid, in pursuance of an act of parliament passed in the fifth year of the reign of his majesty, King George the Fourth, for wilfully exposing to view, on the tenth day of February last, a certain obscene picture in the public highway, called    street, in the parish of Frome Selwood, in the said county of Somerset; the said G. W. having been at a former time, to wit, on the tenth day of May, in the year of our Lord 18   , at the parish and county aforesaid, duly adjudged to be a rogue and vagabond, and duly convicted of a similar offence, that is to say, the offence of exposing to view, on the sixth day of April then last, at the parish and county aforesaid, a certain other obscene picture in the said public highway in the parish aforesaid; whereby the said G. W. was become an incorrigible rogue, within the true intent and meaning of the said act. And the said G. W. having been now brought into this court, and now charged with the said offence so alleged to have been committed by him on the tenth day of February last, and the said court, having examined into the circumstances of the said case, and the premises been seen and understood by the said court: It is considered by the said court here, that the said G. W. be and he is accordingly adjudged an incorrigible rogue; the said offence stated in the said conviction of the said T. H. being the second offence of the said G. W. And this court doth adjudge and order, that the said G. W. be and he is hereby committed to the house of correction at Shepton Mallett, for the space of six calendar months, [*not exceeding one year,*] there to be kept to hard labour, and also that the said G. W. shall, on the day of    next, be publicly whipped in the market-place in Frome, in the county aforesaid.

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### VOLUNTEERS.

(26 & 27 Vict. c. 65. (a))

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WATERMAN (b).

(a) *Stevenson v. Taylor*, 30 L. J.,  
M. C. 145.

(b) See Watermen's and Lightermen's Amendment Act, 1859; 22

## WATERWORKS CONSOLIDATION ACT.

(26 &amp; 27 Vict. c. 93. See ss. 3—11, 16—20 (a).)

## WEIGHTS AND MEASURES.

(18 &amp; 19 Vict. c. 72; 5 &amp; 6 Will. 4, c. 63 (b).)

1. *Conviction for having false Weights, under the 37 Geo. 3, c. 143, s. 2 (c).*

At a petty sessions holden for the district of Kensington, in the said county, before W. B. and J. C., esquires, justices of the peace acting in and for the said county, J. D. of                      in the said county, cheesemonger, was duly convicted before us the said justices: for that the said J. D., on                      day of August instant, at                      in the said county, he the said J. D. being then and there a person who sold by retail and weight divers provisions, goods and chattels, had in his shop there situate a certain false and deficient weight intended to represent a pound weight, which was then and there found in his said shop by one W. F., and which was not according to the standard in the Exchequer at Westminster; contrary to the form of the statute in that case made and provided. And we the said justices do therefore declare and adjudge, that the said J. D. hath forfeited the sum

& 23 Vict. c. cxxxiii; *Doick v. Phelps*, 30 L. J., M. C. 2, and *R. v. Matthews*, 25 L. J., M. C. 7; *Read v. Ingham*, 3 El. & Bl. 889; 23 L. J., M. C. 156; *Matthews v. Master and Company of Thames Watermen*, 1 Jur., N. S. 725, 727, 1204; 25 L. J., M. C. 7; 4 E. & B. 993; *Edmonds v. Same*, 24 L. J., M. C. 124; *Tibble v. Beadon*, *Id.* 104; *R. v. Hobson*, 2 M. & S. 145; *R. v. Taylor*, *Id.* 147, n.

(a) *Hildreth v. Adamson*, 8 C. B., N. S. 587; 30 L. J., M. C. 204; *New River Company v. Johnson*, 2 El. & Bl. 435; 29 L. J., M. C. 93; *Busby v. Chesterfield Waterworks Company*, El., Bl. & El. 176; 27 L. J., M. C. 174.

(b) See 18 & 19 Vict. c. 72; 5 & 6 Will. 4, c. 63; 3 Chitty's Statutes by Welsby & Beavan, p. 1536, tit. "Weights and Measures." As to what are measures within 5 & 6 Will. 4, c. 63, and seizing scales, see *Burton v. Aulton*, 30 L. J., M. C. 129; *Washington v. Young*, 5 Exch.

403; *Thomas v. Stephenson*, 17 Jur. 597; 22 L. J., Q. B. 258; 22 L. J., Exch. 128; *R. v. Jarvis*, 3 El. & Bl. 640; and see *Rosseter v. Cahlan*, 8 Exch. 361; *Hutchings v. Reeves*, 11 L. J., M. C. 109; 2 El. & Bl. 108; *Giles v. Jones*, 11 Exch. 393; 24 L. J., Exch. 259; 1 Jur., N. S. 982. Inspector for a borough stamping weights within district for which county inspector appointed, 5 & 6 Will. 4, c. 63, s. 25; *R. v. Skelton*, 28 L. J., M. C. 222. Appointment of inspector by the recorder of a borough instead of by the county quarter sessions; see *Duly v. Sharrod*, 6 El. & Bl. 830; 25 L. J., M. C. 122.

(b) By 5 Geo. 4, c. 74, all former regulations as to the ascertainment of the standard of weights and measures are repealed, and more uniform standards are established; but all the provisions contained in the previous acts for the punishment of persons having defective weights and measures are still in force.

of 20s. of lawful money of Great Britain for the offence aforesaid, to be applied as the law directs, and also the further sum of 10s. of like lawful money for the reasonable costs and charges attending this conviction.

Given under our hands and seals on the day and in the year first mentioned.

[The above form of conviction is given by the 8th section of the act. By sect. 3, the penalty is to be paid to the treasurer for the county.]

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### WHIPPING.

(25 & 26 *Vict. c. 18.*)

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### WRECK AND SALVAGE.

(See *ante*, SHIPS, p. 676, and the Merchant Shipping Act, 1854, Part viii, and 6 *Burn's Justice*, p. 449, tit. "Wreck" (29th edit.).)

By 24 & 25 *Vict. c. 96*, s. 65, if any goods belonging to any ship or vessel in distress, or wrecked, stranded or cast on shore shall be found in the possession of any person, or on the premises of any person with his knowledge, and such person being taken or summoned before a justice shall not satisfy the justice that he came lawfully by the same, they shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, and the offender shall, on conviction of such offence before the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay over and above the value of the goods such sum of money not exceeding 20*l.* as to the justice shall seem meet. As to offering ship-wrecked goods for sale, see sect. 66.

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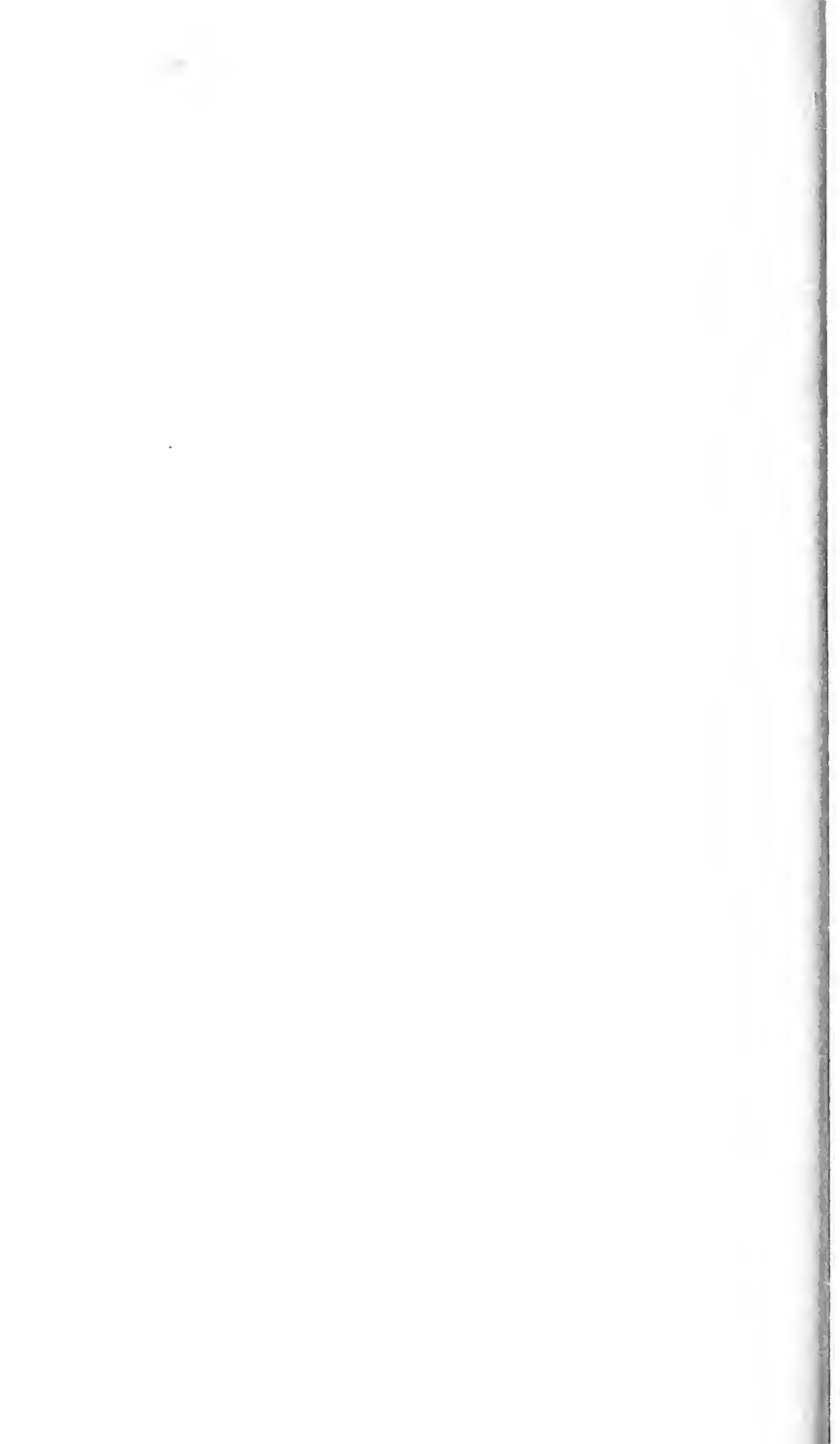
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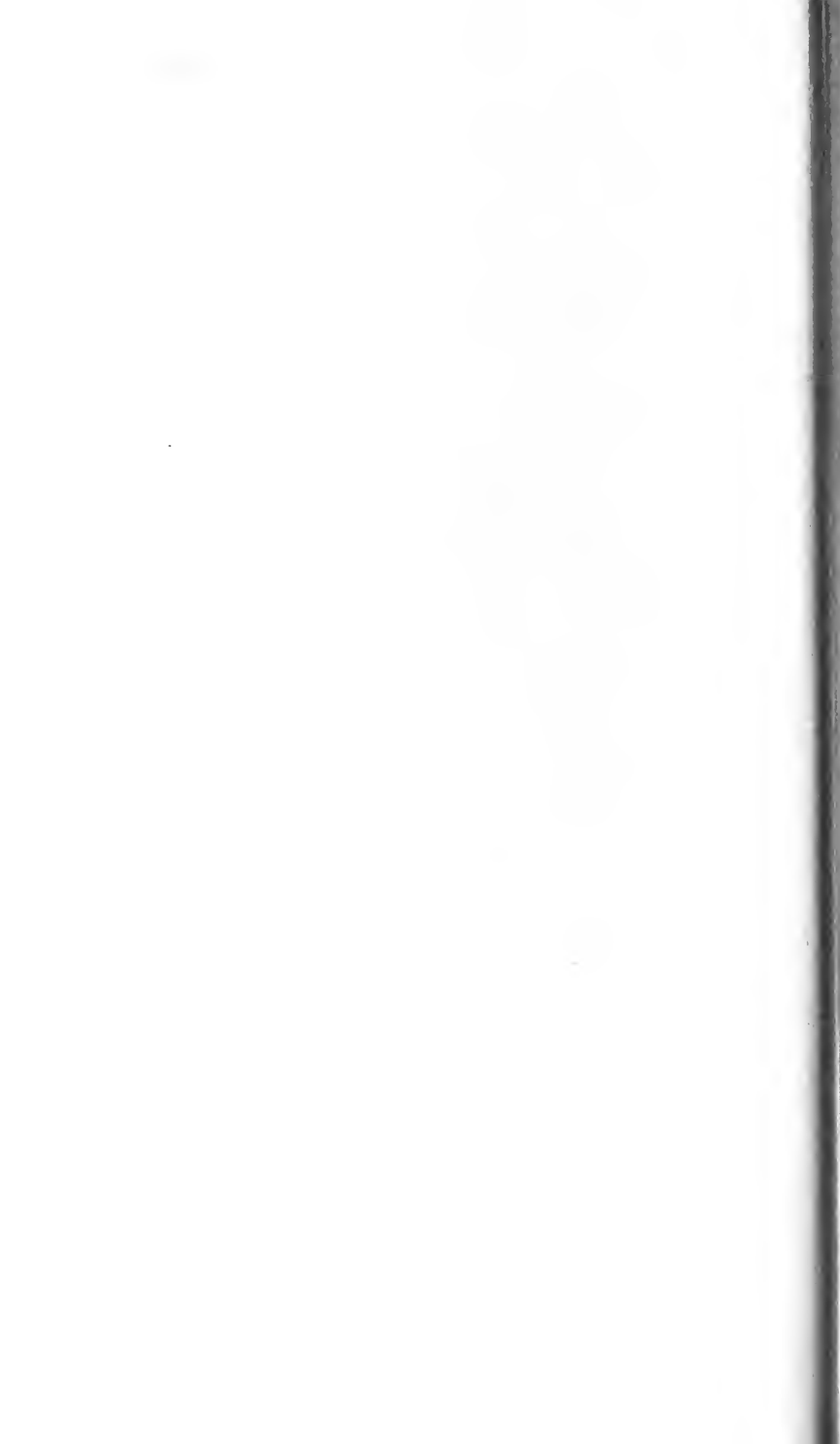
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